

STB

FD

30400

(Sub 21)

3-20-97

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FD-30400

(SUB 21)

3-6-95

J

38423

LAW OFFICES

LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION

38423  
BOX 60485  
SUNNYVALE, CALIFORNIA 94086-0485  
(415) 691-9331



PLEASE RESPOND TO:  
Box 60398  
Palo Alto, CA 94306

(415) 948-4158

March 1, 1995

Secretary  
Interstate Commerce Commission  
12th and Constitution Aves. N.W.  
Washington, D.C. 20423  
Fin Doc 30400 Sub 21

Re: Interstate Commerce Commission  
Decision  
Finance Pocket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company  
Status of decision

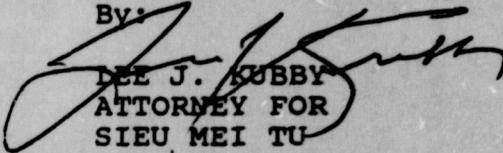
Dear Gentle People:

On or about February 7, 1993, the above matter was submitted to the Commission. Please advise the current status of the submission.

Thank you for your courtesies.

Respectfully,

LEE J. KUBBY, INC.  
A Professional Corporation  
By:

  
LEE J. KUBBY  
ATTORNEY FOR  
SIEU MEI TU

MAR 14 1995  
LJK:me

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FD-30400

(SUB 21)

1-25-93

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MAYER, BROWN & PLATT

CHICAGO  
LONDON  
NEW YORK  
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TOKYO LIAISON OFFICE

2000 PENNSYLVANIA AVENUE, N.W.

202-463-2000  
TELEX 892603  
FACSIMILE:  
202-861-0473

WASHINGTON, D.C. 20006-1885

ADRIAN L. STEEL, JR.  
202-778-0630



January 25, 1993

By Hand

The Honorable Paul S. Cross  
Chief Administrative Law Judge  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: Finance Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Judge Cross:

As discussed during our telephone conference this morning, enclosed please find the draft order relating to the Motion Of Santa Fe Pacific Corporation For Application Of Protective Order which was filed with the Commission on December 22, 1992 in the above-referenced matter. For your convenience, I am also enclosing a disk which contains the draft order.

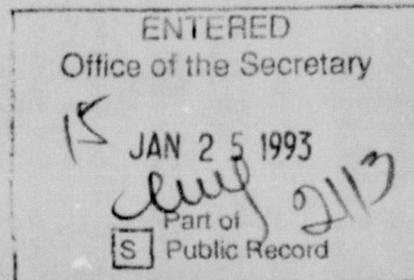
Please call me if you have any questions regarding the enclosed materials. Thank you for your assistance.

Sincerely yours,

Adrian L. Steel, Jr.  
Counsel for Santa Fe Pacific  
Corporation

Enclosures

cc: Honorable Sidney L. Strickland, Jr.  
All Parties of Record



INTERSTATE COMMERCE COMMISSION

ORDER

Finance Docket No. 30400 (Sub-No. 21)

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

Pursuant to the Motion Of Santa Fe Pacific Corporation For Application Of Protective Order dated December 22, 1992, it is hereby ordered that the Evidence and Argument and the Declaration of Barbara Boutourlin filed by Lee Kubby on behalf of Sieu Mei Tu on or around December 18, 1992 be treated as confidential pursuant to the Protective Order served by the Commission in this matter on September 3, 1992. Mr. Kubby is advised that he must in the future abide by the terms and conditions of the Protective Order in this proceeding.

By Paul S. Cross, Chief Administrative Law Judge, on the \_\_\_  
day of January, 1993.

Sidney L. Strickland, Jr.  
Secretary

(Seal)

STB

FD-30400

(SUB 21)

1-11-93

J

38408

# Southern Pacific Transportation Company

38408

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

(415) 541-1000

CANNON Y. HARVEY  
VICE PRESIDENT AND GENERAL COUNSEL

JOHN J. CORRIGAN  
GENERAL COUNSEL LITIGATION

LOUIS P. WARCHOT  
ASSISTANT GENERAL COUNSEL

JOHN MACDONALD SMITH  
SENIOR GENERAL ATTORNEY

FACSIMILE  
GENERAL (415) 495-5436  
LITIGATION (415) 541-1734

WRITER & DIRECT DIAL NUMBER

ROBERT S. BOGASON  
DAVID W. LONG  
CAROL A. HARRIS  
LELAND E. BUTLER  
GARY A. LAAKSO  
STEPHEN A. ROBERTS  
JAMES M. EASTMAN  
WAYNE M. BOLIO  
JOHN D. FEENEY  
GENERAL ATTORNEYS

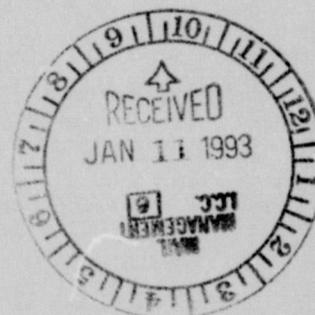
BARBARA A. SPRUNG  
ASSISTANT GENERAL ATTORNEY

ROBERT E. PATTERSON  
CECELIA C. FUSICH  
ATTORNEYS

January 8, 1992

VIA FEDERAL EXPRESS

The Honorable Sidney L. Strickland  
Secretary  
Office of Hearings  
Interstate Commerce Commission, Room 4117  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423



Dear Mr. Strickland:

Enclosed please find an original and 11 copies of DECLARATION OF THOMAS ELLEN IN SUPPORT OF MOTION TO STRIKE AND REQUEST FOR RETURN OF MATERIALS IMPROPERLY INCLUDED IN THE RECORD. Please note that these materials are subject to a confidentiality and protective order and we request they be filed accordingly.

If you have any questions, feel free to contact me. Thank you for your attention to these matters.

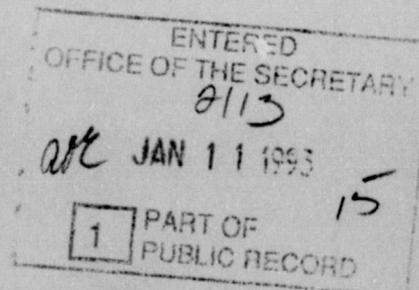
Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'Wayne M. Bolio'.

Wayne M. Bolio

Enclosure  
cc: All parties of record

g:\wmb\santa\p\sup.bri



BEFORE THE  
INTERSTATE COMMERCE COMMISSION



\_\_\_\_\_  
SANTA FE SOUTHERN PACIFIC CORPORATION-- : Finance Docket  
CONTROL--SOUTHERN PACIFIC : No. 30400  
TRANSPORTATION COMPANY : (Sub.-No. 21)  
\_\_\_\_\_ :

DECLARATION THOMAS ELLEN IN SUPPORT OF  
MOTION TO STRIKE AND REQUEST FOR RETURN  
OF MATERIALS IMPROPERLY INCLUDED IN THE RECORD

I, Thomas Ellen declare under penalty of perjury as follows:

1. I have been employed directly or indirectly in the railroad industry from 1969 through 1986. I first joined the management of Southern Pacific Transportation Company ("SPT") in 1972. From 1977 to 1979, I was employed by the Federal Railroad Administration in Washington, D.C., where I performed economic analyses leading to the passage of the Staggers Act, which largely deregulated the railroad industry. In June 1982, I became the General Manager of Pacific Fruit Express ("PFE"), a wholly owned subsidiary of SPT. In that capacity, I reported directly to Mike Mohan, who was President of SPT. I left the employment of PFE and SPT in August 1986. I currently own and operate Pottle's Transportation Inc. based in Bangor, Maine.

2. It was my assignment as General Manager of PFE to take the steps necessary to make the PFE a profitable operation. From 1982 to 1985 I tried various strategies to make PFE profitable. Unfortunately, those strategies were not successful.

ENTERED  
Sometime in  
OFFICE OF THE SECRETARY  
JAN 11 1993  
PART OF  
PUBLIC RECORD

7

early 1985 I was asked to prepare a report on the activities of PFE and recommend a course of action to eliminate the losses of PFE that were being suffered by its parent SPT. On June 17, 1985, I completed the report which was entitled "The Future Of The Perishable Business and PFE. That report accurately set forth the recent history of PFE and its struggle to remain profitable in a deregulated environment.

3. Attached to the report were a number of legal memoranda, prepared by attorneys representing PFE. Those memoranda answered specific legal questions that I had addressed to T.A. Miller, Vice President and General Counsel of SPT. Also attached was a legal memorandum to me dated February 11, 1985 from Patrick Jordan and outside attorney that I had hired for legal advice on certain labor law issues.

4. I delivered copies of the report, with legal memoranda attached to Mike Mohan, T.A. Miller and Denman K. McNear (Chairman of SPT). I also gave a copy of the legal memoranda to T.D. Walsh, PFE's Manager of Labor Relations. I did not authorize any of these people to make copies or distribute the memoranda to any other person.

5. I did not give a copy of these documents to Barbara Boustourlin or to any other employee of SPT or PFE. Simply stated, these documents were not generally disseminated.

6. Because of their sensitive nature, my copies were not filed in the regular files of PFE. Instead, I kept them in my personal possession in a secure location.

7. If counsel for Ms. Tu has copies of the report and such legal memoranda, I believe they were obtained by unauthorized and improper means because no officer of PFE or SPT authorized their delivery to him. These legal memoranda were my property and I did not waive the attorney client privilege that attaches to such documents.

I have signed this document under penalty of perjury on 1/7/93  
at Storby, Connecticut.

  
\_\_\_\_\_  
Thomas Ellen

CERTIFICATE OF SERVICE

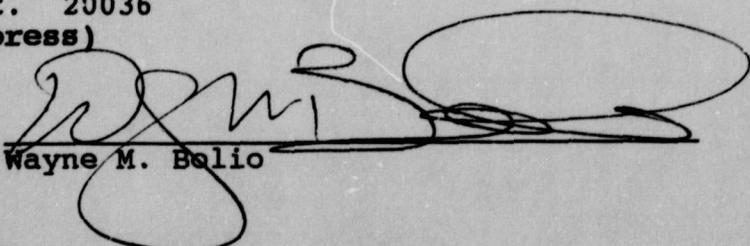
I, hereby certify that on this 8th day of January, 1993 I served the foregoing DECLARATION OF THOMAS ELLEN IN SUPPORT OF MOTION TO STRIKE AND REQUEST FOR RETURN OF MATERIALS IMPROPERLY INCLUDED IN THE RECORD by causing a copy thereof to be delivered to each of the following the manner set forth below:

The Honorable Sidney L. Strickland  
Secretary  
The Honorable Paul S. Cross  
Chief Administrative Law Judge  
Office of Hearings  
Interstate Commerce Commission, Room 4117  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423  
(By Federal Express)

Erika Z. Jones  
Adrian L. Steel, Jr.  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue, N.W., Suite 6500  
Washington, D.C. 20006  
(By Federal Express)

Lee J. Kubby  
Lee J. Kubby, Inc.  
P.O. Box 60485  
Sunnyvale, CA 94086-0485  
(By Express Mail)

William G. Mahoney  
Donald F. Griffin  
Highsaw, Mahoney & Clarke, P.C.  
1050 17th Street, N.W. Suite 210  
Washington, D.C. 20036  
(By Federal Express)

  
Wayne M. Bolio

STB

FD-30400

(SUB 21)

12-21-92

J

38405

**BEST  
AVAILABLE  
COPY**

38405

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1825

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202-463-2000  
TELEX 892603  
FACSIMILE:  
202-461-0473

FACSIMILE TRANSMISSION SHEET

TIME: 5:00pm

DATE: 12/21

MESSAGE TO: Secretary Strickland

FIRM: ICC

MESSAGE FROM: Adrian Steel

FILE NUMBER: 92-03169-9

FAX NUMBER: 927-5984

CONFIRM NUMBER: 927-7428

NUMBER OF PAGES: 2

SPECIAL INSTRUCTIONS:

ENTERED  
Office of the Secretary  
15 DEC 22 1992  
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THIS MESSAGE IS TRANSMITTED BY FAX TO ONE OR MORE INDIVIDUALS OR FIRMS TO WHICH IT IS ADDRESSED AND UNDER CIRCUMSTANCES THAT IS PROHIBITED, CONFIDENTIAL AND SUBJECT TO THE FEDERAL INFORMATION PRACTICES ACT. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, REPRODUCTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF ANY DIFFICULTY IS EXPERIENCED WITH THIS TRANSMISSION, PLEASE CALL (202) 778-0636.

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1985

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LOS ANGELES  
TOKYO LIAISON OFFICE

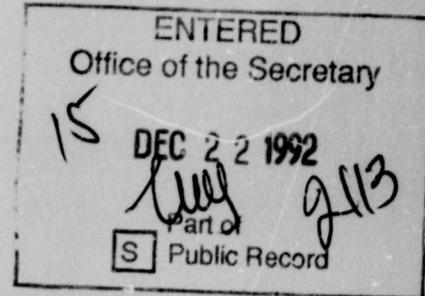


202-463-2000  
TELEX 892603  
FACSIMILE  
202-861-0473

WRITER'S DIRECT DIAL NUMBER

(202) 778-0630

December 21, 1992



By Teletype

The Honorable Sidney L. Strickland  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: Pinnacle Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Confidential -- Southern Pacific Transportation Company

Dear Secretary Strickland:

In accordance with my conversation with Chief Administrative Law Judge Paul S. Cross today, I am writing this letter to request that the Evidence and Argument and the Declaration of Barbara Boutourlin filed by Leo Kubby on behalf of Sieu Mei Tu in the above-referenced matter on or about December 18, 1992, be provisionally treated as if it had been filed confidentially pursuant to the Protective Order served by the Commission in this matter on September 3, 1992. Mr. Kubby's filing which appears not to have been under seal contains and attaches certain documents which Santa Fe Pacific Corporation has designated as confidential under the Order. It appears that certain documents designated as confidential by Southern Pacific Transportation Company were also contained in Mr. Kubby's filing. Judge Cross has requested that we advise you that Mr. Kubby's filing should be treated as confidential until the entry of further order by Judge Cross in this regard.

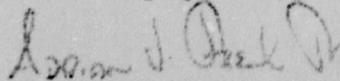
We have informed all parties of our conversation with Judge Cross.

MAYER, BROWN & PLATT

Honorable Sidney L. Strickland  
December 21, 1992  
Page 2

Please call me if you have any questions. Thank you for your cooperation.

Sincerely yours,



Adrian L. Steel, Jr.  
Counsel for Santa Fe Pacific  
Corporation

cc: Honorable Paul S. Cross  
Lee J. Kubby, Esq.  
Wayne M. Solie, Esq.  
Dana Griffin, Esq.

STB

FD-30400

(SUB 21)

12-3-92

J

MAYER, BROWN & PLATT

CHICAGO  
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TOKYO LIAISON OFFICE

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006

202-463-2000  
TELEX 892603  
FACSIMILE  
202-561-0473

ADRIAN L. STEEL, JR.

WRITER'S DIRECT DIAL NUMBER  
202-778-0630

December 2, 1992



**By Express Mail**

Lee J. Kubby  
Lee J. Kubby, Inc.  
Box 60485  
Sunnyvale, California 94086-0485

Re: Finance Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Mr. Kubby:

As indicated in my letter to you yesterday, I am enclosing for your information copies of SFP Annual Reports for the period 1984-1987 and a fact book for 1983 which will provide you with some of the information you sought in your discovery requests about the identities of certain individuals. These materials are being provided as a courtesy since your second set of discovery requests was untimely filed under the Commission's rules.

If you have any questions concerning any of the above, please contact me.

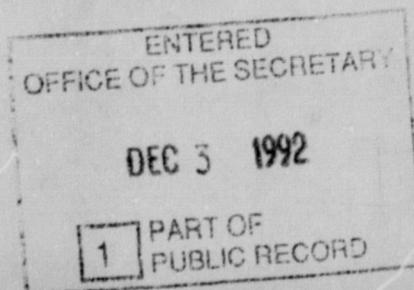
Sincerely yours,

A handwritten signature in cursive script that reads "Adrian L. Steel, Jr.".

Adrian L. Steel, Jr.

**Enclosures**

cc: / Honorable Paul S. Cross (w/o enclosures)  
Honorable Sidney L. Strickland, Jr. (w/o enclosures)  
All Parties of Record (w/o enclosures)



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FD-30400

(SUB 21)

12-1-92

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MAYER, BROWN & PLATT

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NEW YORK  
HOUSTON  
LOS ANGELES  
TOKYO LIAISON OFFICE

2000 PENNSYLVANIA AVENUE, N.W.

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TELEX 892603  
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202-861-0473

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DEC 2 1992  
WRITER'S DIRECT DIAL NUMBER  
202-778-0630  
PART OF  
PUBLIC RECORD  
December 1, 1992

ADRIAN L. STEEL, JR.



By Express Mail

Lee J. Kubby  
Lee J. Kubby, Inc.  
Box 60485  
Sunnyvale, California 94086-0485

Re: Finance Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Mr. Kubby:

On behalf of the Santa Fe Pacific Corporation ("SFP"), we have received your second set of interrogatories and informal request for production of documents dated November 20, 1992 in the above-captioned proceeding.

However, your discovery requests are untimely under the Commission's rules which provide that no written interrogatories shall be served within 20 days prior to the filing of opening statements. 49 C.F.R. § 1114.26(c). As you know, under the Commission's Orders served October 28 and November 20, 1992, the statements of evidence and arguments of former employees of Southern Pacific Transportation Company or their representatives are due on or before December 7, 1992. Thus, your requests are untimely filed. Although SFP does not intend to provide you with formal responses thereto, I will forward to you, in the next day or two, copies of SFP Annual Reports for the period 1983-1987 which will provide the information you sought in your requests about the identities of certain individuals.

SFP further notes that you did not seek an informal agreement with SFP to provide you with the documents requested in your second request. Absent such agreement, the Commission's rules require the petitioning of the Commission for an order directing the production of documents. 49 C.F.R. § 1114.30. Moreover, such a petition must be filed in sufficient time to allow for the filing of replies and for consideration by the Commission without requiring the postponement of the submission of initial statements. 49 C.F.R. § 1114.21(b)(3). Your second set of documents requests is therefore

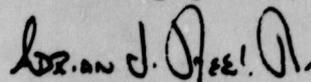
MAYER, BROWN & PLATT

Lee J. Kubby  
December 1, 1992  
Page 2

not in compliance with the Commission's rules, and SFP is under no obligation to provide you with the requested documents.

If you have any questions concerning any of the above, please contact me.

Sincerely yours,



Adrian L. Steel, Jr.

cc: Honorable Paul S. Cross  
Honorable Sidney L. Strickland, Jr.  
All Parties of Record

STB

FD-30400 (SUB 21)

11-27-92

J

LAW OFFICES  
HIGHSAW, MAHONEY & CLARKE, P.C.

SUITE 210  
1050 SEVENTEENTH STREET, N.W.  
WASHINGTON, D.C. 20036  
202-296-8500  
TELECOPIER (202) 296-7143

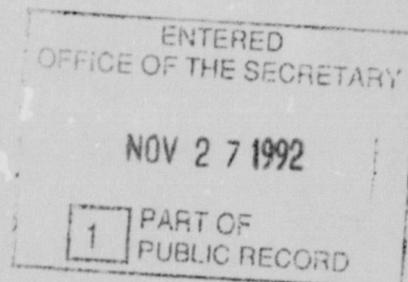
WILLIAM G. MAHONEY  
JOHN O'B. CLARKE, JR.  
RICHARD S. EDELMAN  
L. PAT WYNNIS  
DAVID J. STROM  
DONALD F. GRIFFIN  
ELIZABETH A. NADEAU\*

OF COUNSEL:  
JAMES L. HIGHSAW

November 25, 1992

\*ADMITTED IN MICH & MAINE ONLY

Wayne M. Bolio, Esq.  
Southern Pacific Transportation Company  
Southern Pacific Building  
One Market Plaza  
San Francisco, CA 94105



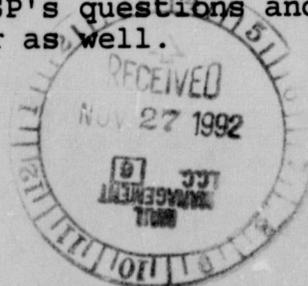
Re: ICC FD No. 30400 (Sub-No. 21), Santa Fe Southern  
Pacific Corp.--Control--Southern Pacific Trans. Co.

Dear Mr. Bolio:

I am in receipt of your letter of November 24, 1992 regarding SPT's response to the following discovery request of the Brotherhood of Maintenance of Way Employees ("BMWE") and International Association of Machinists and Aerospace Workers ("IAMAW") served upon SPT on September 25, 1992:

6. Produce all documents prepared by, produced for or reviewed by SPT, its officers, agents, and employees, in connection with the preparation of answers to questions framed by SFSP and transmitted to SPT via the Voting Trust Trustee in 1985.

In your letter of November 24, 1992, you identified a document dated July 29, 1985 as comprising the answers to the questions referenced in the aforementioned discovery request by BMWE and IAMAW. So that there is no confusion in this matter, what BMWE and IAMAW requested from SPT are those documents responsive to the above request that either expressly relate to maintenance of way or maintenance of equipment employees represented by BMWE and IAMAW, respectively, or documents that concern employment decisions generally that touch upon BMWE or IAMAW represented employees. The June 18, 1985 letter from Mr. McNear to Mr. Schmidt, while not created in response to the SFS?'s questions, was appended by SPT to its July 29, 1985 answers. Therefore, BMWE and IAMAW consider that document to be part of the "answers" prepared by SPT in response to SFSP's questions and, therefore, the request applies to that letter as well.

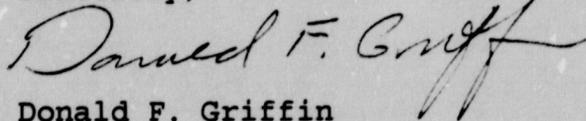


Mr. Wayne Bolio, Esq.  
Re: FD No. 30400 (Sub-No. 21)  
November 25, 1992  
Page 2

As I understand your letter, as regards both the June 18, 1985 letter from Mr. McNear to Mr. Schmidt and the July 29, 1985 answers from SPT to the SFSP questions transmitted by the Voting Trust Trustee, no responsive documents have been uncovered by SPT. Such a claim is flatly inconsistent with your earlier assertion of either the attorney/client or work product privileges which presuppose the existence of otherwise responsive documents. Nevertheless, I will accept your representation at face value. However, please be advised that if SPT attempts to rebut any BMW or IAMAW assertion regarding the June 18 or July 29, 1985 documents with documents contemporaneous to them, BMW and IAMAW will take all necessary steps to strike such rebuttal from the record.

If there is anything regarding this letter that is unclear, please contact me.

Sincerely,



Donald F. Griffin

cc: Hon. Paul Cross  
Hon. Sidney Strickland

STB

FD-30400

(SUB 21)

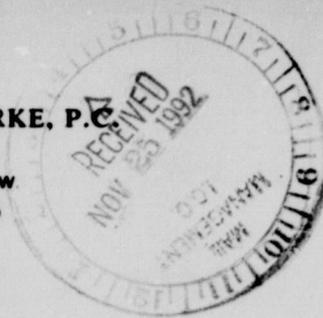
11-25-92

J

LAW OFFICES •  
HIGHSAW, MAHONEY & CLARKE, P.C.

SUITE 210  
1050 SEVENTEENTH STREET, N.W.  
WASHINGTON, D.C. 20036  
202-296-8500  
TELECOPIER (202) 296-7143

WILLIAM G. MAHONEY  
JOHN O'B. CLARKE JR.  
RICHARD S. EDELMAN  
L. PAT WYNNIS  
DAVID J. STROM  
DONALD F. GRIFFIN  
ELIZABETH A. NADEAU\*



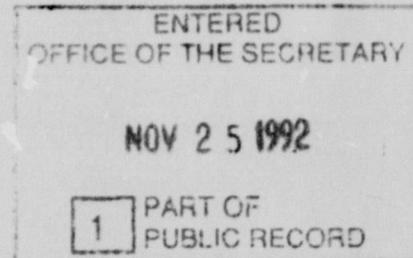
OF COUNSEL:  
JAMES L. HIGHSAW

November 19, 1992

\*ADMITTED IN MICH. & MAINE ONLY

via overnight delivery

Wayne M. Bolio, Esq.  
General Attorney  
Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, CA 94105



Re: ICC Finance Docket No. 30400 (Sub-No. 21), Santa Fe Southern Pacific Corp.--Control--Southern Pacific Transportation Co.

Dear Mr. Bolio:

I am in receipt of Southern Pacific Transportation Company's ("SPT") answers and objections to the interrogatories and requests for production of documents served by the Brotherhood of Maintenance of Way Employees and International Association of Machinists and Aerospace Workers (collectively "the Unions"). As a preliminary matter, I would appreciate your forwarding to me the list of employees referenced in SPT's response to Interrogatory No. 1(b).

The primary purpose of this letter, however, is to take exception to SPT's claim that it need not respond at all to the Unions' interrogatory and request for production of documents No. 6. The Unions take strong exception both to SPT's claim that production of the documents would be burdensome or otherwise oppressive and to SPT's claim that the documents are protected by either attorney-client privilege or the work product doctrine.

As regards the claim by SPT that production of the documents would be burdensome, it was not the intent of the Unions to seek those documents that did not relate in some way to the answers in the document "faxed" to SPT by the Unions on October 22, 1992. That documents had been redacted by the Santa Fe Pacific Corporation ("SFP") to deal only with issues related to maintenance of way employees, maintenance of equipment employees or employee issues generally that touched upon either group of employees. Therefore, the Unions only seek those documents that relate to the formulation of the answers contained in the "fax" transmission of October 22, 1992. Such a production cannot be

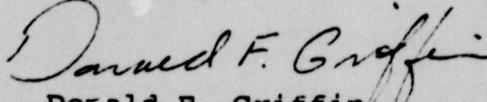
Mr. W. Bolio, Esq.  
Re: ICC FD No. 30400 (Sub-No. 21)  
November 19, 1992  
Page 2

burdensome because the SFP already has made such a production of documents.

The Unions contend that SPT's other reasons for nonproduction, i.e., claims of attorney-client privilege or work product doctrine are groundless. Assuming, without conceding, that the attorney-client privilege ever could have applied to the preparation of the answers by SPT to the questions from the Santa Fe Southern Pacific Corporation ("SFSP"), that privilege was waived when SPT communicated the answers to the Trustee and the Trustee, in turn, communicated them to SFSP. See, In re Sealed Case, 877 F.2d 976, 979-80 (D.C. Cir. 1989). That waiver applies not only to the answers, but the "details" underlying the published communication, i.e., those documents requested by the Union. U.S. v. (Under Seal), 748 F.2d 871, 875, n.7 (4th Cir. 1984). The claim by SPT that the work product doctrine applies is equally without merit because that doctrine only applies to the work of an attorney in anticipation of litigation. See, Westinghouse Electric Corp. v. Republic of the Phillipines, 951 F.2d 1414, 1428 (3d Cir. 1991). Certainly, the SPT cannot credibly claim that the answers prepared by its former General Counsel were done in anticipation of litigation.

Based upon the foregoing, the Unions request that SPT reconsider its objection to their interrogatory and request for production of documents No. 6. Please advise the undersigned, in writing, no later than 5:00 PM (EST), on Monday, November 23, 1992, whether the SPT will reconsider its objections.

Sincerely,

  
Donald F. Griffin

cc: Hon. Paul S. Cross  
Hon. Sidney Strickland

STB

FD-30400

(SUB 21)

11-17-92

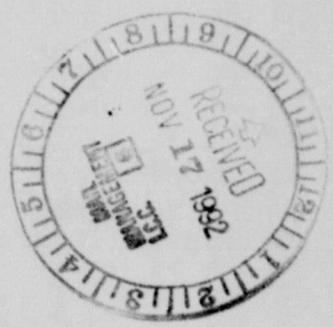
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OFFICE OF THE SECRETARY  
PART OF  
PUBLIC PROPERTY

Finance Docket No. 30400 (Sub.No. 21)



BEFORE THE  
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 30400 (SUB-NO. 21)

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

J

AFFIDAVIT OF R. G. SNYDER

I, R. G. Snyder, declare as follows:

1. I have been employed by Southern Pacific Transportation Company for thirty-two years. I am currently employed as manager of Rules and Training in the Engineering Department. In 1985-1986 I was employed as Manager of Administration in the Engineering Department.

2. I have personal knowledge of the matters contained within this Declaration and could competently testify to the same if called as a witness.

3. The Engineering Department is responsible for the maintenance, repair, and installation of track, roadbed, and related structures. Agreement employees in the Maintenance of Way

area are within the jurisdiction of the Engineering Department.

4. As Manager of Administration I had overall administrative responsibilities for the Engineering Department including the generation and maintenance of records in the central corporate headquarters of the Engineering Department in San Francisco, California. Various records and documents are likewise maintained in outlying offices over the entire Southern Pacific Transportation system.

5. The Engineering Department does not retain documents relating to the severance and/or furlough of BMW employees beyond a one year period. I am not aware of any documents in the Engineering Department relating to the severance and/or furlough of BMW employees during 1985-86. Further, it is not standard policy in the Engineering Department to retain business documents of this type (furlough of BMW employees) beyond a one year period. However, literally hundreds of thousands of documents are maintained in the Engineering Department at more than one location and, in most cases, these documents are indexed by subject matter. A search does not reveal any records relating to furlough/severance of BMW employees in 1985-86. Therefore, the Engineering Department maintains no documents which would disclose whether BMW employees were furloughed at any time in the 1985-1986 period, and if so, the names of those employees or the circumstances under which those employees were furloughed. I have no recollection of any severance programs being offered to BMW employees in 1985-1986.

6. Historic employment levels within the Maintenance of Way function fluctuate to a large degree based on a number of factors. For example, when for budgetary reasons (such as a short-fall in projected income) or in the winter months as a result of inclement weather Southern Pacific has been forced to reduce Maintenance of Way employees. In the Maintenance of Way area, rail and tie programs have been cut in response to budgetary needs. Under the collective bargaining agreement with the BMWWE, the carrier must give Five-Day Notice of its intention to furlough BMWWE employees. Under the collective bargaining agreement the employees on a particular rail or tie gang who are given notice of their furlough have the right to exercise seniority and "bump" to any other position which their seniority would allow them to hold. When cut-backs have occurred, and a certain rail and tie program is eliminated or delayed, employees who are thereafter furloughed frequently exercise their seniority. There is a "ripple effect" following any cut-backs in the BMWWE ranks as those employees who are able exercise seniority on other portions of the Southern Pacific system. The carrier does not maintain the five-day furlough notices in any location within the Engineering Department in excess of twelve months. Moreover, because of bumping rights, even where a particular project is eliminated and an employee is given notice, it is difficult to predict which BMWWE employee is actually furloughed because of bumping rights. Therefore, it is not possible to identify any particular individual or location where BMWWE employees were furloughed in 1985-1986 from records in

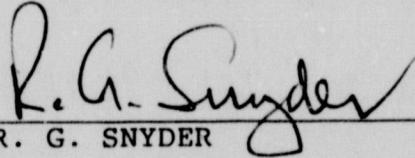
the Engineering Department.

7. In 1985 and 1986 I have no recollection of severance programs being offered to BMW employees. Typically, when for seasonal, business, or economic reasons BMW employees were furloughed, the Five-Day Notices were given and those employees were placed in furlough status until recalled to duty. The employees were not paid while in furlough status and I am not aware of any severance programs offered to BMW employees in 1985-1986 or at any other time.

8. Although it is not possible to trace the specific identities of individual BMW employees who were furloughed at any given time, the Engineering Department has maintained overall employee counts reflecting the total number of employees in the Engineering Department by craft, including officers. I have made a diligent search of my files and have located employee counts which reflect the number of BMW employees on the Southern Pacific Transportation Company and St. Louis Southwestern Railway Company in 1985 and 1986, and I have provided that information in response to these Interrogatories.

I declare under the laws of the United States that the above is true and correct.

Dated: Nov. 12, 1992

  
\_\_\_\_\_  
R. G. SNYDER

Finance Docket No. 30400 (Sub-No. 21)

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 30400 (SUB-NO. 21)

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

State of California,  
County of San Francisco,

SS:

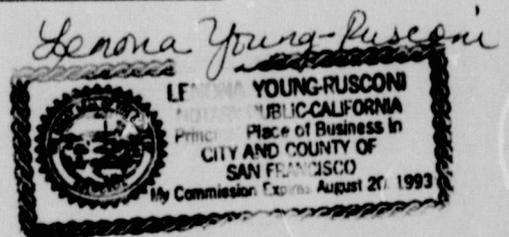
K. W. Dixon being duly sworn, deposes and says that he read the answers to interrogatory 4, knows the facts asserted there are true and that the same are true as stated.

Signed *K. W. Dixon*.

Subscribed and sworn to before me this 16<sup>th</sup> day of November, 1992.

Notary Public of California.

My Commission expires August 20, 1993.

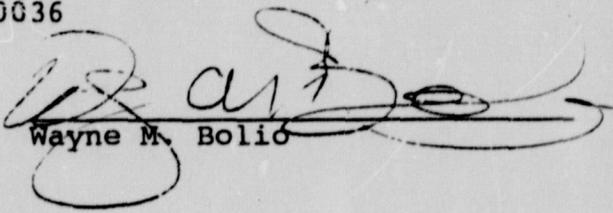


**CERTIFICATE OF SERVICE**

I hereby certify that today I served copies of the foregoing upon the following by overnight mail delivery to:

Adrian Steele, Esq.  
MAYER, BROWN & PLATT  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Donald Griffin  
Highsaw, Mahoney and Clarke  
1050 Seventeenth Street, N.W.  
Washington, D.C. 20036

  
Wayne M. Bolio

Dated: November 16, 1992

STB

FD-30400 (SUB 21)

10-23-92

J

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MAYER, BROWN & PLATT

CHICAGO  
LONDON  
NEW YORK  
HOUSTON  
LOS ANGELES  
TOKYO  
BRUSSELS

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1885

202-463-2000  
TELEX 892603  
FACSIMILE:  
202-861-0473

ENTERED  
OFFICE OF THE SECRETARY

OCT 23 1992

October 23, 1992

38386

By Hand

The Honorable Paul S. Cross  
Chief Administrative Law Judge  
Office of Hearings  
Interstate Commerce Commission  
Room 4117  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423



Re: Finance Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Judge Cross:

This letter confirms the agreements reached on Wednesday of this week during our telephone conference call concerning certain discovery issues and the reinstatement of the procedural schedule in the above-captioned proceeding. A draft of this letter was circulated to all counsel identified on the attached service list, and I am authorized to represent on behalf of Mr. Griffin and Mr. Bolio their agreement to its terms. With respect to Mr. Kubby, I have advised you of his concerns relating to the status of his clients and when evidence and argument on behalf of those clients is due, and I have added to the proposed order which is attached the language you determined should be included to address Mr. Kubby's concerns.

The schedule shall be reestablished as follows: the Southern Pacific Transportation Company ("SPT") shall respond to BMW/IAMAW's First Set of Interrogatories and Informal Request for Production of Documents on or before November 16, 1992; Evidence and argument of former employees of the SPT or their representatives is due on or before December 7, 1992; Reply evidence and argument is due on or before January 8, 1993; and Rebuttal evidence and argument is due on or before January 29, 1993. In the event that SPT fully responds to BMW's and IAMAW's discovery requests before November 16, 1992, all dates thereafter shall be adjusted accordingly with all time intervals to remain the same.

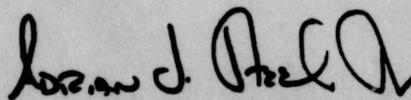
Issues relating to the pending discovery by Sieu Mei Tu and Joseph Z. Tu are to be severed from the instant proceeding. Parties shall file responses, if any, to the "Motion Of Injured

The Honorable Paul S. Cross  
October 23, 1992  
Page 2

Party Sieu Mei Tu For Order Compelling Inspection And Production; Sanctions For Failure To Give Discovery; Extension Time To Complete Discovery And Submit Evidence" ("Tu's Motion") on October 27, 1992. Mr. Bolio, counsel for SPT, shall convene a conference call with you and all counsel on November 4, 1992 at 1:00 p.m. (EST) to resolve any pending issues relating to Tu's Motion and to determine when, if appropriate, evidence and argument of Mr. and Mrs. Tu is to be filed in this sub-docket.

Please let us know if you have any questions. Thank you for your assistance.

Sincerely yours,



Erika Z. Jones  
Adrian L. Steel, Jr.  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue, N.W.  
Suite 6500  
Washington, D.C. 20006

Counsel for Santa Fe Pacific  
Corporation

Enclosure

INTERSTATE COMMERCE COMMISSION

ORDER

Finance Docket No. 30400 (Sub-No. 21)

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

It is hereby ordered that the following procedural schedule is established:

1. The Southern Pacific Transportation Company ("SPT") shall respond to BMW/IAMAW's First Set of Interrogatories and Informal Request for Production of Documents on or before November 16, 1992;

2. Evidence and argument of former employees of the SPT or their representatives is due on or before December 7, 1992;

3. Reply evidence and argument is due on or before January 8, 1993; and

4. Rebuttal evidence and argument is due on or before January 29, 1993.

In the event that SPT fully responds to BMW's and IAMAW's discovery requests before November 16, 1992, all dates thereafter shall be adjusted accordingly with all time intervals to remain the same.

Issues relating to the pending discovery by Sieu Mei Tu and Joseph Z. Tu are severed from the instant proceeding. Parties shall file responses, if any, to the "Motion Of Injured Party Sieu Mei Tu For Order Compelling Inspection And Production; Sanctions For Failure To Give Discovery; Extension Time To Complete Discovery And Submit Evidence" ("Tu's Motion") on October 27, 1992. A conference call shall be convened with counsel on November 4, 1992 to resolve any pending issues relating to Tu's Motion and to determine when, if appropriate, evidence and argument of Mr. and Mrs. Tu is to be filed in this sub-docket. Nothing in this Order is intended as determinative of the right of Mr. and Mrs. Tu to participate in this sub-docket at this stage of the proceeding or otherwise.

By Paul S. Cross, Chief Administrative Law Judge, on the \_\_\_ day of October, 1992.

Sidney L. Strickland, Jr.  
Secretary

(SEAL)

cc: Lee J. Kubby  
Lee J. Kubby, Inc.  
213 Acalanes #5  
Sunnyvale, California 94086  
(By Federal Express)

William G. Mahoney  
Donald F. Griffin  
Highsaw, Mahoney & Clarke, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, D.C. 20036  
(By Messenger)

Wayne M. Bolio  
Southern Pacific Transportation Company  
819 Southern Pacific Building  
One Market Plaza  
San Francisco, California 94105  
(By Federal Express)

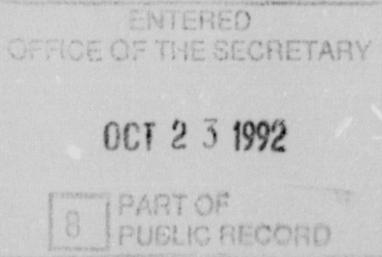
MAYER, BROWN & PLATT

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LOS ANGELES  
TOKYO  
BRUSSELS

2000 PENNSYLVANIA AVENUE, N.W.

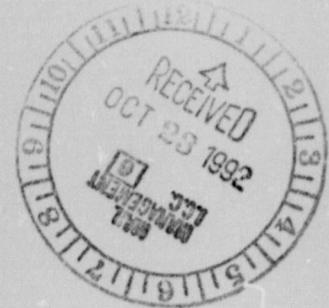
WASHINGTON, D.C. 20006-1885

202-463-2000  
TELEX 892603  
FACSIMILE:  
202-861-0473



WRITER'S DIRECT DIAL NUMBER

October 23, 1992



**By Hand**

The Honorable Sidney L. Strickland  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: Finance Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Secretary Strickland:

Enclosed please find, for filing with the Commission, eleven copies of a letter and proposed order in the above-referenced matter. Please time and date stamp one copy and return it to our messenger.

Please call me if you have any questions regarding the enclosed materials. Thank you for your assistance.

Sincerely yours,

Kathryn A. Kusske  
Counsel for Santa Fe Pacific  
Corporation

Enclosures

cc: Honorable Paul S. Cross

STB

FD-30400 (SUB 21)

10-9-92

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MAYER, BROWN & PLATT

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LONDON  
NEW YORK  
HOUSTON  
LOS ANGELES  
TOKYO LIAISON OFFICE

2000 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20006

ENTERED OFFICE OF THE SECRETARY
OCT 9 - 1992
9 PART OF PUBLIC RECORD

202-463-2000  
TELEX 892603  
FACSIMILE  
202-861-0473

ADRIAN L. STEEL, JR.

WRITER'S DIRECT DIAL NUMBER  
202-778-0630

October 8, 1992

By Hand

Donald F. Griffin, Esq.  
Highsaw, Mahoney & Clarke, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, D.C. 20036

J



Re: Finance Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Mr. Griffin:

We have received and reviewed the responses of the Brotherhood of Maintenance of Way Employes ("BMWE") and the International Association of Machinists and Aerospace Workers ("IAMAW") to the first set of interrogatories and informal document requests served by the Santa Fe Pacific Corporation ("SFP") in this matter. Based on our review of those responses and of the documents produced by BMWE and IAMAW, we believe that, as explained below, BMWE and IAMAW's responses to SFP's requests need to be supplemented in at least two respects.

First, Interrogatory No. 2(B) to each union requested the identification and production of documents relating to any written unilateral severance offer, voluntary resignation program or other employee separation program offered or implemented by SPT during the period from December 23, 1983 until August 4, 1987 and affecting members of BMWE or IAMAW. It is not clear from BMWE's and IAMAW's responses to this request whether the two unions were stating that they were unable to locate copies of any such offers or programs or whether they were unable to locate any documents whatsoever that relate to any such offers or programs. Thus, we would like to request that BMWE and IAMAW each confirm whether it has in its possession any documents which in any way relate to the types of severance offer, voluntary resignation program or other severance program offered or implemented by SPT during the relevant time period, and, if so, that each union identify and produce all

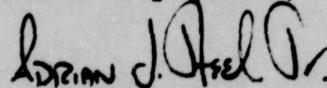
Donald F. Griffin, Esq.  
October 8, 1992  
Page 2

such documents even if the union cannot locate an actual copy of the offer or program itself.

Second, Interrogatory No. 3 to each union requested the identification and production of all documents supporting or otherwise concerning any claim by BMW and IAMAW or other employee representatives that rail carrier employees were adversely affected by actions taken or orders issued by SFSP (a) in anticipation of the proposed ATSF/SPT merger, (b) in alleged violation of the SPT Voting Trust Agreement, or (c) in alleged violation of the carrier merger, consolidation and control provisions of the Interstate Commerce Act (49 U.S.C. §§ 11341-11351). BMW's and IAMAW's responses suggest that they interpreted this request to be limited to only those documents supporting or otherwise concerning any formal "claim" which had been filed or asserted in a proceeding. SFP intended no such limitation of the meaning of the word "claim", and accordingly we would like to request that BMW and IAMAW each identify and produce all documents in their possession which in any way relate to whether any actions taken or orders issued by SFP of the nature described in Interrogatory No. 3 adversely affected rail carrier employees without regard to whether any formal claim has ever been made or asserted in a proceeding based on those actions or orders.

We request that BMW and IAMAW supplement their responses to these two interrogatories and produce any additional responsive documents they may have at their earliest convenience, but, at the latest, by October 23, 1992, fifteen (15) days from the date and delivery of this letter. We also reserve the right to seek to have any evidence stricken which is filed by the unions that is responsive to SFP's discovery requests, but is not made available because of the unions' overly narrow interpretation of such requests. If you have any questions concerning our request, please contact us. Thank you for your cooperation in this regard.

Sincerely yours,



Adrian L. Steel, Jr.

cc: Honorable Paul S. Cross  
Honorable Sidney L. Strickland, Jr.  
All parties of record

STB

FD-30400 (SUB 21)

9-29-92

J

38379

LAW OFFICES

LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION

38379  
BOX 60485  
SUNNYVALE, CALIFORNIA 94086-0485  
(415) 691-9331

September 26, 1992

Secretary  
Interstate Commerce Commission  
12th and Constitution Aves. N.W.  
Washington, D.C. 20423



Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company  
DEMAND FOR INSPECTION AND COPYING

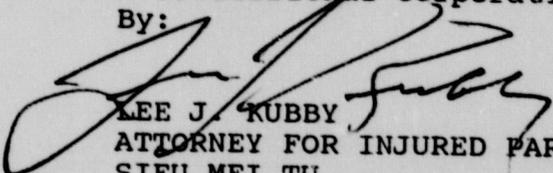
Dear Gentle People:

Enclosed please find original and 8 copies of Demand for Production in the above matter. Please file and return the enclosed face sheet endorsed filed in the enclosed self addressed and stamped envelope.

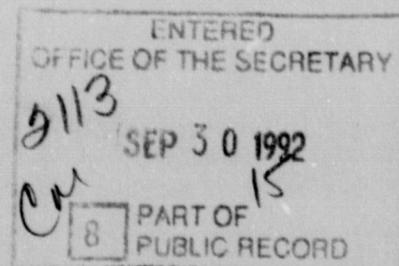
Should you not require all eight copies of this documents please DO NOT RETURN ANY COPIES OTHER THAN THE FACE SHEET. If however you do not file discovery matters at all, please return only the original in the enclosed envelope. Thank you.  
Thank you for your courtesies.

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation

By:

  
LEE J. KUBBY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

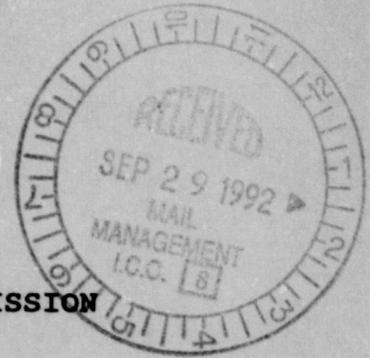
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LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION  
BOX 60485  
Sunnyvale, CA 94086-0485  
(415) 691-9331

Attorney for Injured Party Sieu Mei Tu



INTERSTATE COMMERCE COMMISSION

SIEU MEI TU AND JOSEPH Z. TU )

Injured Parties )

VS )

SOUTHERN PACIFIC TRANSPORTATION )  
COMPANY; ATCHISON, TOPEKA, SANTA FE )  
RAILROAD COMPANY; PACIFIC FRUIT )  
EXPRESS COMPANY; SANTA FE SOUTHERN )  
PACIFIC CORP. )

Applicants )

Interested Parties )

Finance Docket No. 30400  
(Sub-No. 21)

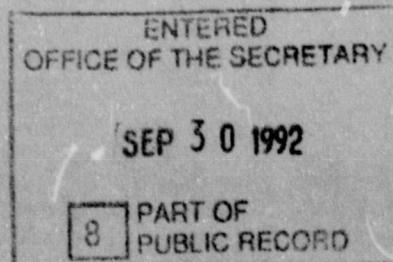
Demand for  
Inspection and  
Production

Re: Interstate Commerce Commission  
Decision

Finance Docket No. 30400  
(Sub-No. 21)

Santa Fe Southern Pacific Corporation  
Control

Southern Pacific Transportation Company



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DEMANDING PARTY:  
Injured Parties Tu  
RESPONDING PARTY:  
SOUTHERN PACIFIC TRANSPORTATION COMPANY;  
ATCHISON, TOPEKA, SANTA FE RAILROAD COMPANY;  
PACIFIC FRUIT EXPRESS COMPANY;  
SANTA FE SOUTHERN PACIFIC CORP.  
Applicants  
Interested Parties

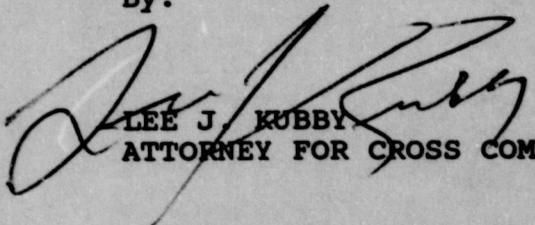
SET NUMBER: ONE

TO APPLICANTS--INTERESTED PARTIES AND EACH OF THEM AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that INJURED PARTIES TU demand, that APPLICANTS AND EACH OF YOU, produce the documents described on Exhibit A hereto which is incorporated herein by this reference as if set forth in full, for inspection and copying by INJURED PARTIES TU on October 15, 1992 at 231 Acalanes, Suite 5, Sunnyvale, California, 94086, at 10:00 A.M.

Dated: September 25, 1992.

LEE J. KUBBY, INC.  
A Professional Corporation  
By:

  
LEE J. KUBBY  
ATTORNEY FOR CROSS COMPLAINANTS

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EXHIBIT A

1. Please produce all of the specified documents which are in your possession, or available to you or to which you may gain access through reasonable effort, including information in the possession of your attorneys, accountants, advisors or other persons directly or indirectly employed by you, or connected with you, or anyone else otherwise subject to your control.

2. Unless specific arrangements to the contrary are expressly made by attorney for injured parties, you are to produce the originals together with all non-identical copies of each document requested.

3. In responding to this request for production, you must make a diligent search of your records and of other papers and materials in your possession or available to you or your representatives.

DEFINITIONS

For the purposes of this request for production of documents, the following terms shall have the following meanings:

1. As used herein the term "document" refers to an and includes each and every printed, written, typewritten,

1 graphic, photographic, electronically recorded or sound-  
2 recorded matter, however produced or reproduced, of every kind  
3 and description including, but not limited to, files, books,  
4 correspondence, letters, memoranda, telegraphs, papers,  
5 notes, records, resolutions, drafts, evaluations, entries,  
6 minutes, calendars, reports, appointment records, diaries,  
7 studies, working papers, financial records, summaries and  
8 charts, whether the original, or any carbon or photographic or  
9 other copy, reproduction or facsimile thereof, other than  
10 exact duplications. Any copy or excerpt of a document which  
11 bears any notes, additions, inserts, or other markings of any  
12 kind is to be considered a separate document for purposes of  
13 responding to the requests herein.

14  
15 2. As used herein, "you" refers to each of the applicants who  
16 are noticed herein, to each of their agents, employees,  
17 representatives, accountants or attorneys, who with respect to  
18 the subject matters of this request, was or is acting on their  
19 behalf.

20  
21 3. As used herein, "Tus" refers to the injured parties herein,  
22 Sieu Mei Tu and Joseph Z. Tu

23  
24 4. As used herein, "SFSP" refers to applicant SANTA FE SOUTH-  
25 ERN PACIFIC CORP., and to each of its officers, agents,  
26 employees, representatives or attorneys who, with respect to  
27 the subject matter of the request, was or is acting on  
28

1 SFSP's behalf.

2  
3 5. As used herein, "SPTC" refers to the applicant Southern  
4 Pacific Transportation Company their directors, officers,  
5 agents, employees, representatives, accountants or attorneys,  
6 who with respect to the subject matter of the request, was or  
7 is acting on SPTC's behalf.

8  
9 6. As used herein, "PFE" refers to the applicant Pacific Fruit  
10 Express their directors, officers, agents, employees, repres-  
11 entatives, accountants or attorneys, who with respect to the  
12 subject matter of the request, was or is acting on PFE's  
13 behalf.

14  
15 7. As used herein "ATSF" refers to the applicant Atchison,  
16 Topeka, Santa Fe Railroad Company and to each of its agents,  
17 employees, representatives, accountants or attorneys, who with  
18 respect to the subject matter of the request, was or is acting  
19 on ATSF's behalf.

20  
21 8. As used herein, "person" refers to and includes natural  
22 persons, as well as businesses and all other artificial enti-  
23 ties, unless otherwise limited herein.

24  
25 9. As used herein, "MERGER" means the merger of SPTC and ATSF  
26 as originally petitioned in this matter.

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10. As used herein, "identify" refers to and includes identification by name, business and residence address and telephone number, job title and employer.

13. Unless otherwise stated, the time period for this request shall be from January 1, 1980 to December 30, 1985.

1  
2 DOCUMENTS TO BE PRODUCED  
3

4 (1) All documents produced to the plaintiffs in Kraus v.  
5 Santa Fe Southern Pacific Corp. et al.  
6

7 (2) Minutes of all meetings attended by SPTC., ATSF, and SPSF  
8 CORP. wherein any discussion took place concerning the pro-  
9 posed merger between ATSF and SPTC.  
10

11 (3) All editions of the Southern Pacific Update, from  
12 January 1, 1980 to December 31, 1989.  
13

14 (4) Document entitled "The Future of the Perishable Busi-  
15 ness and PFE" and all exhibits and addenda thereto pre-  
16 pared by Thomas D. Ellen, Vice President & General Manager,  
17 on or about June 7, 1985.  
18

19 (5) All memorandum, minutes, notes, regarding personnel to  
20 be moved to SPTC offices from PFE, of all meetings held  
21 wherein said subject was discussed from January 1, 1981 to  
22 October 30, 1985.  
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24 (6) All memos from E. E. Clark to T.D. Ellen from January  
25 1, 1985 to October 30, 1985.  
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(7) Minutes of all special and regular Board of Directors meetings of PFE from January 1, 1981 to October 30, 1985.

(8) Document from T. D. Ellen to D. K. McNear and D. M. Mohan dated April 2, 1984.

(9) Memorandum to T. R. Ashton, from T. C. Wilson, Re: SP's Revenue Estimation Process w/P& L implications received by T. D. Ellen on or about June 29, 1984.

PROOF OF SERVICE BY MAIL

State of California  
County of Santa Clara

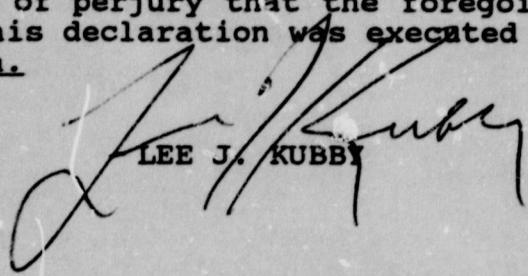
I am and at the time of the service hereinafter mentioned was a resident of the State of California, County of Santa Clara, and at least 18 years old. I am not a party to the within entitled action. I am an attorney licensed to practice in the State of California.

My business address is Box 60485, Sunnyvale, California 94086-0485. On 9-26-92 I deposited in the United States mail at Sunnyvale, California, enclosed in a sealed envelope and with the postage prepaid the attached

DEMAND FOR INSPECTION AND PRODUCTION

addressed to the persons listed on the attached sheet:

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on 9-26-92 at Sunnyvale, California.

  
LEE J. KUBBY

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ATTACHED SHEET

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Applicant  
Santa Fe Pacific Corporation Company  
1700 East Golf Rd.  
Schaumburg, Ill. 60173-5560

Applicant Representative  
Jerome F. Donohoe  
224 South Michigan Ave  
Chicago, Ill 60604-2507

Southern Pacific Transportaition Company  
Southern Pacific Building  
1 Market Plaza #846  
San Francisco, CA 94105-1001

Atchison Topeka & Santa Fe Railroad Co.  
1700 E. Golf  
Schaumburg, Ill 60173-5860

Mitchell M. Kraus, General Counsel  
Transportation Communications Int'l Union  
3 Research Place  
Rockville, MD 20850

Donald F. Griffin, Esq.  
Highsaw, Mahoney & Clarke, P.C.  
Suite 210  
1050 Seventeenth Street, N.W.  
Washington, D.C. 20036

STB

FD-30400 (SUB 21)

9-18-92

J

LAW OFFICES  
HIGSAW, MAHONEY & CLARKE, P.C.  
SUITE 210

1050 SEVENTEENTH STREET, N.W.  
WASHINGTON, D.C. 20036  
202-296-8500  
TELECOPIER (202) 296-7143

WILLIAM G. MAHONEY  
JOHN O'B. CLARKE, JR.  
RICHARD S. EDELMAN  
L. PAT WYNNS  
DAVID J. STROM  
DONALD F. GRIFFIN  
ELIZABETH A. NADEAU\*

September 15, 1992

OF COUNSEL:  
JAMES L. HIGSAW



\*ADMITTED IN MICH. & MAINE ONLY

Adrian L. Steel, Jr.  
MAYER BROUN & PLATT  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-1885

Re: *Finance Docket No. 30400 (Sub-No. 21), Santa Fe Southern Pacific Corp.--Control Southern Pacific Transp. Co.*

Dear Mr. Steel:

Thank you for your cooperation in arranging for my review of documents produced by SFSP in response to the requests of the Brotherhood of Maintenance of Way Employees and the International Association of Machinists and Aerospace Workers for production of documents relating to the above-referenced matter. In connection with those requests, and pursuant to my review of the documents produced, we request that you provide us with copies of certain documents which were produced for my review. Please provide us with copies of the following documents which are identified by the page numbers affixed to them by SFSP: 201-204, 213-217, 229-237, 308-314, 323-331, 364-366, 509-510, 519-522, 526, 527-541, 1091, 1246-1252, 1253-1259, 1260-1278, 1279, 1287-1289, 1290-1297, 1300-1302, 1303-1335, 1344, 1345-1346, 1347-1383, 1399-1400, 1409-1413, 1450-1451, 1454-1473, 1498-1499, 1560-1565, 1694-1698, 1761-1784, 1920, 1955-1956, 2049-2057, 2061-2063, 2122, 2123, 2124, 2127-2137, 2139, 2140-2148, 2149-2154, 2201-2204, 2205-2206, 2279-2282, 2287-2290.

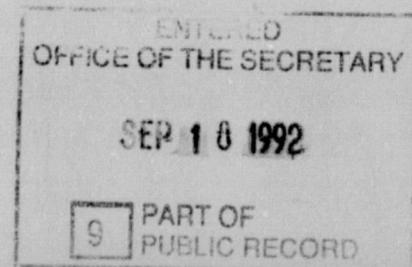
Please call me if you have any questions or problems concerning this request.

Sincerely,

Richard S. Edelman

cc: Honorable Sidney L. Strickland  
Honorable Paul S. Cross

RSE:ljr





STB

FD-30400 (SUB 21)

9-16-92

J

LAW OFFICES  
HIGSAW, MAHONEY & CLARKE, P.C.

SUITE 210  
1050 SEVENTEENTH STREET, N.W.  
WASHINGTON, D.C. 20036  
202-296-8500  
TELECOPIER (202) 296-7143

WILLIAM G. MAHONEY  
JOHN O'B. CLARKE, JR.  
RICHARD S. EDELMAN  
L. PAT WYNNIS  
DAVID J. STROM  
DONALD F. GRIFFIN  
ELIZABETH A. NADEAU\*

OF COUNSEL:  
JAMES L. HIGSAW

September 16, 1992

\*ADMITTED IN MICH. & MAINE ONLY

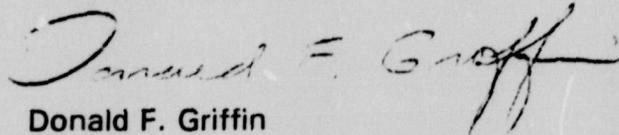
Adrian L. Steel, Jr., Esq.  
MAYER, BROWN & PLATT  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006-1885

Re: ICC Finance Docket No. 30400 (Sub-No. 21), Santa Fe Southern  
Pacific Corp.--Control--Southern Pacific Trans. Co.

Dear Mr. Steel:

Please accept this letter as confirmation of our telephone conversation today regarding BMW's and IAMAW's response to SFP's discovery requests. In that conversation, we agreed that the time for BMW's and IAMAW's response to SFP's discovery responses would be extended until the close of business on Thursday, September 24, 1992. It was further agreed that this extension of time limits regarding discovery responses was not intended to enlarge or otherwise affect the procedural schedule set by the Commission in its order served September 10, 1992. Also, you represented that SFP would produce the copies of the documents requested by Mr. Richard S. Edelman of this firm by Friday, September 18, 1992.

Sincerely,

  
Donald F. Griffin

cc: Hon. Paul S. Cross  
Hon. Sidney Strickland

*Filed Date?*

ENTERED OFFICE OF THE SECRETARY	
SEP 20 1992	
9	PART OF PUBLIC RECORD

STB

FD-30400 (SUB 21)

9-4-92

J

38374

38374

MAYER, BROWN & PLATT

CHICAGO  
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LOS ANGELES  
TOKYO LIAISON OFFICE

2000 PENNSYLVANIA AVENUE, N.W.

202-463-2000  
TELEX 892603  
FACSIMILE  
202-861-0473

WASHINGTON, D.C. 20006

ADRIAN L. STEEL, JR.

WRITER'S DIRECT DIAL NUMBER  
202-778-0630

September 4, 1992

T

By Hand

The Honorable Sidney L. Strickland  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423



Re: Finance Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Secretary Strickland:

Enclosed please find, for filing with the Commission, eleven copies of a letter that was delivered to Judge Cross today regarding the agreement between counsel for the Brotherhood of Maintenance of Way Employes and the International Association of Machinists and Aerospace Workers and counsel for Santa Fe Pacific Corporation concerning the reinstatement of the procedural schedule in this matter. Please time and date stamp one copy of the letter and return it to our messenger.

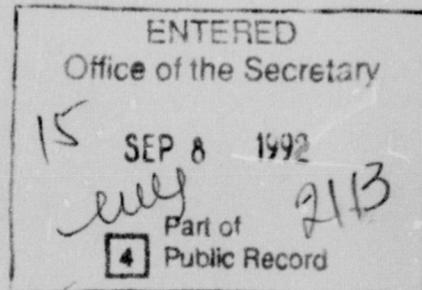
Please call me if you have any questions regarding the enclosed materials. Thank you for your assistance.

Sincerely yours,

Adrian L. Steel, Jr.  
Counsel for Santa Fe Pacific Corporation

Enclosures

cc: Honorable Paul S. Cross  
All Parties of Record



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LONDON  
NEW YORK  
HOUSTON  
LOS ANGELES  
TOKYO LIAISON OFFICE

2000 PENNSYLVANIA AVENUE, N.W.

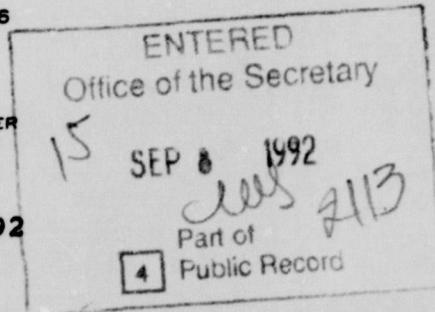
WASHINGTON, D.C. 20006

202-463-2000  
TELEX 892603  
FACSIMILE  
202-861-0473

ADRIAN L. STEEL, JR.

WRITER'S DIRECT DIAL NUMBER  
202-778-0630

September 4, 1992



By Hand

The Honorable Paul S. Cross  
Chief Administrative Law Judge  
Office of Hearings  
Interstate Commerce Commission  
Room 4117  
12th Street & Constitution Ave., N.W.  
Washington, D.C. 20036

Re: Finance Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Judge Cross:

As discussed in our conference call earlier this week, we have spoken to Donald Griffin, counsel for the Brotherhood of Maintenance of Way Employes ("BMWE") and the International Association of Machinists and Aerospace Workers ("IAMAW"), to determine whether we could agree on a date for the reinstatement of the procedural schedule in this matter. After having the opportunity to review the interrogatories and informal document requests directed to BMWE and IAMAW by Santa Fe Pacific Corporation ("SFP"), Mr. Griffin and we have agreed to a reinstatement of the procedural schedule effective today, September 4, 1992, with the following due dates which track the time intervals set by the Commission in its June 12, 1992 decision:

- October 19, 1992 -- Evidence and argument of former employees of the Southern Pacific Transportation Company ("SPT") or their representatives due.
- November 18, 1992 -- Reply evidence and argument due.
- December 8, 1992 -- Rebuttal evidence and argument due.

We would appreciate your taking whatever steps are necessary in order to have the procedural schedule as outlined above reinstated. If you have any questions concerning our agreement

Hon. Paul S. Cross  
September 4, 1992  
Page 2

or if there is anything further that the parties need to do in order to have the procedural schedule reinstated, please contact Mr. Griffin or myself. Thank you very much for your assistance.

Sincerely yours,

*Adrian L. Steel, Jr.*

Adrian L. Steel, Jr.

cc: Donald F. Griffin, Esq.

STB

FD-30400 (SUB 21)

8-11-92

J

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MAYER, BROWN & PLATT

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CHICAGO  
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TOKYO  
BRUSSELS

2000 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20006-1882

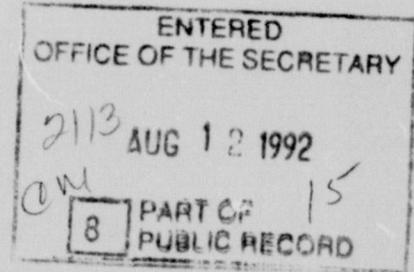
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TELEX 892603  
FACSIMILE:  
202-861-0473

ERIKA Z. JONES  
202-778-0642

August 11, 1992

By Hand

The Honorable Sidney L. Strickland  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423



Re: Finance Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Secretary Strickland:

Enclosed please find, for filing with the Commission, eleven copies of a joint letter and proposed order of The Santa Fe Pacific Corporation, The Brotherhood of Maintenance of Way Employees and the International Association of Machinists and Aerospace Workers in the above-referenced matter. Please time and date stamp one copy and return it to our messenger.

Please call me if you have any questions regarding the enclosed materials. Thank you for your assistance.

Sincerely yours,

Erika Z. Jones  
Counsel for Santa Fe Pacific Corporation

Enclosures

cc: Honorable Paul S. Cross



MAYER, BROWN & PLATT

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LOS ANGELES  
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BRUSSELS

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WASHINGTON, D.C. 20006-1882

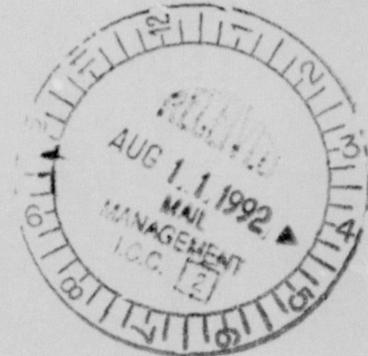
202-463-2000  
TELEX 892603  
FACSIMILE:  
202-861-0473

ERIKA Z. JONES  
202-778-0642

August 11, 1992

By Hand

The Honorable Paul S. Cross  
Chief Administrative Law Judge  
Office of Hearings  
Interstate Commerce Commission  
Room 4117  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423



Re: Finance Docket No. 30407 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Judge Cross:

As you are aware, by decision served August 4, 1992, the Commission referred the above-captioned proceeding to the Office of Hearings for resolution of discovery issues. There is currently pending a Petition For Leave To Serve Requests For Production Of Documents on the Santa Fe Pacific Corporation ("Santa Fe") which was filed on July 27, 1992 by The Brotherhood of Maintenance of Way Employees ("BMWE") and the International Association of Machinists and Aerospace Workers ("IAMAW").

Without waiving any objections, Santa Fe has agreed not to oppose BMWE's and IAMAW's Petition. Counsel for Santa Fe, BMWE, and IAMAW have agreed that Santa Fe will have until September 1, 1992 to respond to the requests for documents. Prior to making any documents available for inspection and copying at location(s) to be determined, Santa Fe will work with counsel for BMWE and IAMAW to prepare a protective order to safeguard Santa Fe's confidential proprietary and commercial information, and will seek the entry of such order by the Commission.

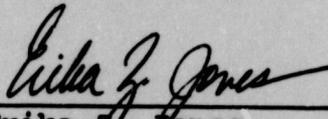
Counsel for Santa Fe, BMWE, and IAMAW have also agreed that responses to Interrogatories filed on July 24, 1992 by BMWE and IAMAW will be served by Santa Fe to the extent possible on August 17, 1992. The remainder of Santa Fe's answers to the Interrogatories will be served on September 1, 1992, when responsive documents are produced.

The Honorable Paul S. Cross  
August 11, 1992  
Page 2

The undersigned counsel for Santa Fe, BMWE, and IAMAW respectfully request that you enter the attached proposed order reflecting their agreement.

Please let us know if you have any questions. Thank you for your assistance.

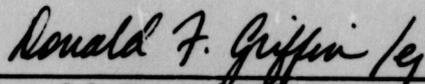
Sincerely yours,



---

Erika Z. Jones  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue, N.W.  
Suite 6500  
Washington, D.C. 20006

Counsel for Santa Fe Pacific  
Corporation



---

Donald F. Griffin  
Highsaw, Mahoney & Clarke, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, D.C. 20036

Counsel for the Brotherhood  
of Maintenance of Way Employes  
and the International Association  
of Machinists and Aerospace Workers

Enclosure

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 30400 (Sub-No. 21)

SANTA FE & SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

Pursuant to the joint request dated August 11, 1992 of Santa Fe Southern Pacific Corporation ("Santa Fe"), The Brotherhood of Maintenance of Way Employees ("BMWE"), and the International Association of Machinists and Aerospace Workers ("IAMAW"), it is hereby ordered that:

1. The petition for leave to serve requests for production of documents filed on July 27, 1992 by BMWE and IAMAW is granted.
2. Santa Fe shall respond to the requests for production of documents on or before September 1, 1992.
3. Santa Fe shall serve on August 17, 1992 partial answers to BMWE's and IAMAW's Interrogatories, and shall serve the remainder of its answers on September 1, 1992.

By Paul S. Cross, Chief Administrative Law Judge, on the \_\_\_\_  
day of August, 1992.

CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of August 1992, I caused copies of the foregoing joint letter request and proposed order to be served by first class mail, postage prepaid upon the following:

John MacDonald Smith, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Building  
One Market Plaza  
San Francisco, California 94105

Charles Kong  
1017 Brown Street  
Bakersfield, California 93305

Lee J. Kubby, Esq.  
Lee J. Kubby, Inc.  
Box 60485  
Sunnyvale, California 94086-0485

Garling A. Husske

STB

FD-30400 (SUB 21)

8-11-92

J

38367

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38367

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NEW YORK  
HOUSTON  
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BRUSSELS

2000 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20006-1882

202-463-2000  
TELEX 892603  
FACSIMILE:  
202-861-0473

ERIKA Z. JONES  
202-778-0642

August 11, 1992

By Hand

The Honorable Sidney L. Strickland  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

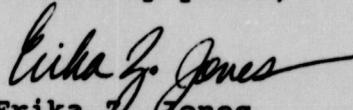
Re: Finance Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Secretary Strickland:

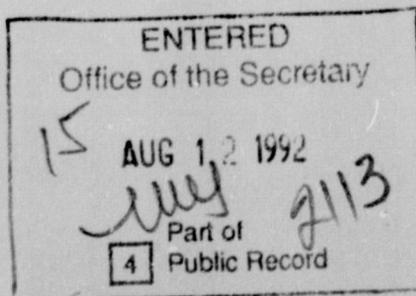
Please enter the appearance of the undersigned as counsel to the Santa Fe Pacific Corporation in the above-captioned proceeding. The Santa Fe Pacific Corporation is located at 1700 East Golf Road, Schaumburg, Illinois 60173.

Please let me know if you have any questions. Thank you for your assistance.

Sincerely yours,



Erika Z. Jones  
Counsel for Santa Fe Pacific  
Corporation



STB

FD-30400

(SUB 21)

7-28-92

J

38365

LAW OFFICES  
**LEE J. KUBBY, INC.**  
A PROFESSIONAL CORPORATION

BOX 60485  
SUNNYVALE, CALIFORNIA 94086-0485  
(415) 691-9331

? 38365 ?

J

July 27, 1992

Secretary  
Interstate Commerce Commission  
12th and Constitution Aves. N.W.  
Washington, D.C. 20423



Fed Ex 2567775641

Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company

RECEIVED  
OFFICE OF THE  
SECRETARY  
Aug 11 1 35 PM '92  
LEGAL UNIT

Dear Gentle People:

Please add the name of  
Sieu Mai Tu  
1697 Hickory Ave.  
San Leandro, CA 94579

and that of the undersigned as her attorney to your mailing list in the above entitled matter.

Mrs. Tu is a former employee of Pacific Fruit Express, a wholly owned subsidiary of Southern Pacific Transportation Company, who was terminated ("furloughed") in October, 1985, without benefits, after 23 years of continuous faithful service. Her termination was without just cause and was the result of the wrongful actions systematically taken by STSP, ATSP, and SPTC beginning in 1982 in anticipation of and in aid of their merger. These actions as they continued through 1984 and 1985 were in violation of the orders of the ICC. Every principal of equity requires your agency to impose labor protective conditions here.

Enclosed pursuant to paragraph 2 of your order of decision effective June 18, 1992, is Mrs. Tu's preliminary evidence and argument concerning what has befallen her in these circumstances. It should be noted that other employees of Pacific Fruit Express were also terminated in anticipation of the merger, and labor protective conditions are also appropriate for their protection. (See declaration Richard Fend page 527 lines 9 through page 528 line 13

Page Two  
July 27, 1992  
Secretary ICC

Volume II Preliminary Evidence and argument).

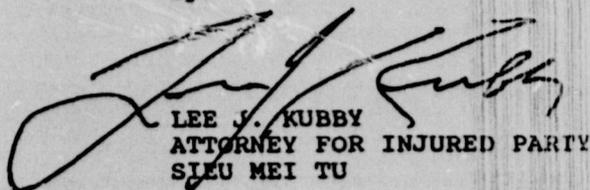
The recent case of Kraus v. Santa Fe Southern Pacific Corp., 878 F2d 1193 (9th Cir. 1989) is res judicata that the intention to merge Southern Pacific and ATSF commenced in 1980, and that Santa Fe Southern Pacific Corporation, SFTC, and ATSF conspired to avoid giving terminated employees New York Dock conditions on the merger. (See discussion in Appellants Answering Reply Brief pages 1, 26, 27, 28 enclosed).

Mrs. Tu's depositions 5/11/87, page 33 Vol I Preliminary Evidence; 9/8/88 page 321 Vol I Preliminary Evidence; declaration page 733 Vol II Preliminary Evidence; and Answers to Defendants Second Set of Interrogatories page 209 Vol I Preliminary Evidence reinforce and graphically describe how the railroads went about achieving their goals. Clearly Mrs. Tu and others were adversely affected by employer actions taken in anticipation of the merger. Clearly labor protective conditions are gravely required for all those adversely affected.

Please call and advise receipt, and return an endorsed and sealed copy of this letter in the enclosed self addressed stamped envelope.

Thank you for your courtesies.

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:

  
LEE J. KUBBY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

LJK:me  
Encls.  
Appellants Brief  
Appellants Answering Brief  
Injured Parties Initial Evidence and Argument

LAW OFFICES  
LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION

38 365  
BOX 60485  
SUNNYVALE, CALIFORNIA 94086-0485  
(415) 691-9331

July 29, 1992

Legal Unit  
Interstate Commerce Commission  
12th and Constitution Aves. N.W.  
Room 2113  
Washington, D.C. 20423

Attn: Miss Lane  
Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company

LEGAL UNIT

AUG 3 1 47 PM '92

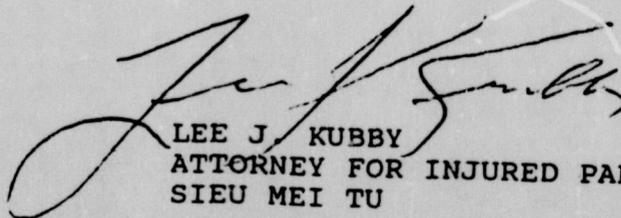
RECEIVED  
OFFICE OF THE  
SECRETARY

Dear Miss Lane:

Thank you for your telephone call of July 29, 1992, advising that an original and 8 copies of the material submitted by me with my letter of July 27, 1992 are required. As per your request enclosed please find 8 additional copies.

Thank you for your courtesies.

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:



LEE J. KUBBY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

LJK:me  
Encls.  
8 Appellants Brief  
8 Appellants Answering Brief  
8 Injured Parties Initial Evidence and Argument

LAW OFFICES

LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION

BOX 60485  
SUNNYVALE, CALIFORNIA 94086-0485  
(415) 691-9331

July 27, 1992

COPY

Secretary  
Interstate Commerce Commission  
12th and Constitution Aves. N.W.  
Washington, D.C. 20423

Fed Ex 2567775641

Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company

Dear Gentle People:

Please add the name of  
Sieu Mei Tu  
1697 Hickory Ave.  
San Leandro, CA 94579  
and that of the undersigned as her attorney to your mailing  
list in the above entitled matter.

Mrs. Tu is a former employee of Pacific Fruit Express, a wholly owned subsidiary of Southern Pacific Transportation Company, who was terminated ("furloughed") in October, 1985, without benefits, after 23 years of continuous faithful service. Her termination was without just cause and was the result of the wrongful actions systematically taken by STSP, ATSF, and SPTC beginning in 1982 in anticipation of and in aid of their merger. These actions as they continued through 1984 and 1985 were in violation of the orders of the ICC. Every principal of equity requires your agency to impose labor protective conditions here.

Enclosed pursuant to paragraph 2 of your order of decision effective June 18, 1992, is Mrs. Tu's preliminary evidence and argument concerning what has befallen her in these circumstances. It should be noted that other employees of Pacific Fruit Express were also terminated in anticipation of the merger, and labor protective conditions are also appropriate for their protection. ( See declaration Richard Fend page 527 lines 9 through page 528 line 13

Page Two  
July 27, 1992  
Secretary ICC

COPY

Volume II Preliminary Evidence and argument).

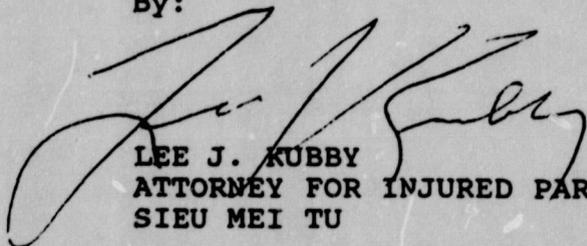
The recent case of Kraus v. Santa Fe Southern Pacific Corp., 878 F2d 1193 (9th Cir. 1989) is res judicata that the intention to merge Southern Pacific and ATSF commenced in 1980, and that Santa Fe Southern Pacific Corporation, SPTC, and ATSF conspired to avoid giving terminated employees New York Dock conditions on the merger. (See discussion in Appellants Answering Reply Brief pages 3, 26, 27, 28 enclosed).

Mrs. Tu's depositions 5/11/87, page 33 Vol I Preliminary Evidence; 9/8/88 page 321 Vol I Preliminary Evidence; declaration page 733 Vol II Preliminary Evidence; and Answers to Defendants Second Set of Interrogatories page 309 Vol I Preliminary Evidence reinforce and graphically describe how the railroads went about achieving their goals. Clearly Mrs. Tu and others were adversely affected by employer actions taken in anticipation of the merger. Clearly labor protective conditions are gravely required for all those adversely affected.

Please call and advise receipt, and return an endorsed filed copy of this letter in the enclosed self addressed stamped envelope.

Thank you for your courtesies.

Respectfully submitted,  
LEE J. KUBEY, INC.  
A Professional Corporation  
By:



LEE J. KUBEY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

LJK:me  
Encls.  
Appellants Brief  
Appellants Answering Brief  
Injured Parties Initial Evidence and Argument

STB

FD-30400 (SUB 21)

7-27-92

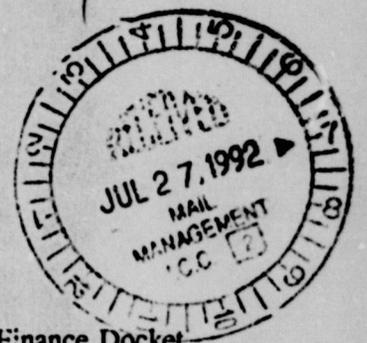
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38361

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ENTERED  
Office of the Secretary  
JUL 28 1992  
Part of  
7 Public Record

BEFORE THE  
INTERSTATE COMMERCE COMMISSION



SANTA FE SOUTHERN PACIFIC CORPORATION--  
CONTROL--SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

Finance Docket  
No. 30400 (Sub-No. 21)

**REQUEST FOR PRODUCTION OF DOCUMENTS**

The Brotherhood of Maintenance of Way Employees ("BMW") and the International Association of Machinists and Aerospace Workers ("IAMAW") respectfully serve through counsel, pursuant to 49 C.F.R. §1114.30, the following request for production of documents upon the Santa Fe Pacific Corporation (formerly Santa Fe Southern Pacific Corporation). A response to these requests should be served upon counsel for BMW and IAMAW: HIGSAW, MAHONEY & CLARKE, P.C., 1050 17th Street, N.W., Suite 210; Washington, DC 20036; fifteen (15) days after service of these requests.

**DEFINITIONS**

- (1) **Document:** The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of this term.
- (2) **ICC:** The term "ICC" means the Interstate Commerce Commission.
- (3) **Rules of Construction:** The following rules of construction apply to all discovery requests:
  - (a) **All/Each;** the terms "all" and "each" shall be construed as all and each;

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ENTERED  
Office of the Secretary  
JUL 28 1992  
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7 Public Record

BEFORE THE  
INTERSTATE COMMERCE COMMISSION



SANTA FE SOUTHERN PACIFIC CORPORATION--  
CONTROL--SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

Finance Docket  
No. 30400 (Sub-No. 21)

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HIGHSAW, MAHONEY & CLARKE, P.C., 1050 17th Street, N.W., Suite 210;  
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- (2) **ICC:** The term "ICC" means the Interstate Commerce Commission.
- (3) **Rules of Construction:** The following rules of construction apply to all discovery requests:
  - (a) **All/Each;** the terms "all" and "each" shall be construed as all and each;

(b) *And/Or*, the terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise be construed to be outside of its scope.

(c) *Number*, the use of the singular form of any word includes the plural and vice versa.

- (4) ***Time Period Covered By Document Requests:*** The time period covered by these interrogatories runs from January 1, 1982 until Rio Grande Industries, Inc. assumed control of the Southern Pacific Transportation Company, its affiliates, subsidiaries, successors and assigns.

#### **Request for Production of Documents**

1. Produce each document identified in response to Interrogatory Number 2.
2. Produce each document identified in response to Interrogatory Number 4.
3. Produce each document identified in response to Interrogatory Number 6.
4. Produce each document identified in response to Interrogatory Number 7.
5. Produce each document identified in response to Interrogatory Number 8.
6. Produce each document identified in response to Interrogatory Number 10.
7. Produce each document identified in response to Interrogatory Number 11.
8. Produce each document identified in response to Interrogatory Number 13.
9. Produce each document identified in response to Interrogatory Number 15.
10. Produce each document identified in response to Interrogatory Number 16.
11. Produce each document identified in response to Interrogatory Number 20.

12. Produce each document presented to the ICC's Office of Compliance and Consumer Assistance in response to the investigation referenced in the decision in *Santa Fe Southern Pacific Corp.--Control--Southern Pacific Trans. Co.*, Finance Docket No. 30400, served February 27, 1987 (not published).

Respectfully submitted,

---

William G. Mahoney  
Donald F. Griffin

HIGSAW, MAHONEY & CLARKE, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, DC 20036  
(202) 296-8500

Attorneys for BMW and IAMAW

Dated: \_\_\_\_\_, 1992

**CERTIFICATE OF SERVICE**

I hereby certify that today I served copies of the foregoing "Petition to Serve Request for Production of Documents" upon the following by overnight mail delivery to:

Jerome F. Donohoe, Esq.  
Santa Fe Pacific Corporation  
1700 East Golf Road  
Schaumburg, IL 60173

Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

and by first class mail delivery to:

John MacDonald Smith, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

Charles Kong  
1017 Brown Street  
Bakersfield, CA 93305

E. R. Straatsma  
P.O. Box 214  
Folsom, CA 95630

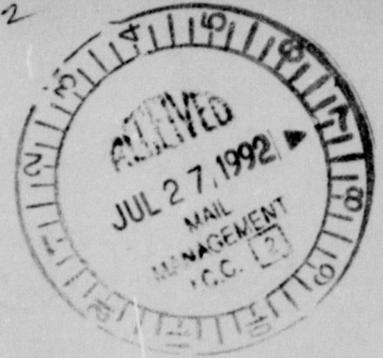
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Donald F. Griffin

Dated: \_\_\_\_\_, 1992

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Office of the Secretary  
7/28 1992  
Part of  
7 Public Record

38362



BEFORE THE  
INTERSTATE COMMERCE COMMISSION

SANTA FE SOUTHERN PACIFIC CORPORATION--  
CONTROL--SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

Finance Docket  
No. 30400 (Sub-No. 21)

**MOTION FOR EXTENSION OF TIME**

The Brotherhood of Maintenance of Way Employees ("BMWE") and International Association of Machinists and Aerospace Workers ("IAMAW"), through counsel, respectfully move this Commission to grant them an additional 45 days in which to file evidence and argument in the above captioned proceeding. In support of this motion, BMWE and IAMAW state the following.

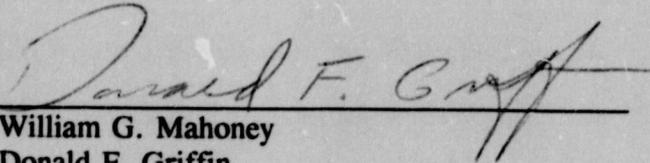
On March 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded this case to the Commission for further proceedings to determine if the Commission, in its exercise of discretionary powers, should impose protective conditions for the benefit of Southern Pacific Transportation Company ("SPT") employees adversely affected by actions taken in contemplation of the proposed SPT-Atchison, Topeka & Santa Fe Railway Company merger. *Ry. Labor Executives' Ass'n v. I.C.C.*, 958 F.2d 252, 258 (9th Cir. 1992). In a decision and order served June 18, 1992, the Commission reopened this proceeding "to give SPT employees (as a class) an opportunity to demonstrate that they were adversely affected as a direct consequence of actions taken or orders issued by [Santa Fe Southern Pacific Corp. (now called Santa Fe Pacific Corp.) SFSP in contemplation of the proposed ATSF-SPT merger." June 18, 1992 Order at 3. The briefing schedule set forth by the Commission

requires that the employees' representatives present argument and evidence in support of their positions on August 3, 1992, replies must be filed on September 1, 1992 and rebuttal is due on September 21, 1992.

The Commission's June 18, 1992 decision was circulated to all rail labor organizations that previously had participated in this proceeding, either in their own right or through membership of their chief executive officers in the Railway Labor Executives' Association. The undersigned counsel was only recently retained by BMW and IAMAW to represent their interests in this remanded proceeding. On July 24, 1992, the BMW and IAMAW served interrogatories upon SFSP. Under Commission rules, responses to those interrogatories need not be served until August 8, 1992, a date after the deadline for filing of evidence by employee representatives. Moreover, this day, the BMW and IAMAW have filed with the Commission a petition for leave to serve requests for the production of documents upon SFSP. Action on that petition and SFSP's response, if the petition is granted, cannot occur prior to August 3, 1992. Accordingly, BMW and IAMAW respectfully submit that the Commission should extend its procedural schedule in this proceeding by an additional 45 days so that initial evidence and argument by employee representatives is due on September 17, 1992; replies are due October 16, 1992 and rebuttal evidence and argument is due on November 6, 1992.

WHEREFORE. based upon the foregoing, BMW and IAMAW respectfully request that their motion for extension of time be granted.

Respectfully submitted,

  
\_\_\_\_\_  
William G. Mahoney  
Donald F. Griffin

HIGSAW, MAHONEY & CLARKE, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, DC 20036  
(202) 296-8500

Attorneys for BMW and IAMAW

Dated: July 27, 1992

**CERTIFICATE OF SERVICE**

I hereby certify that today I served copies of the foregoing "Motion for Extension of Time" upon the following by overnight mail delivery to:

Jerome F. Donohoe, Esq.  
Santa Fe Pacific Corporation  
1700 East Golf Road  
Schaumburg, IL 60173

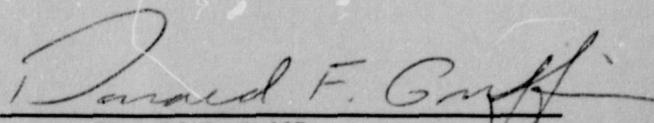
Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

and by first class mail delivery to:

John MacDonald Smith, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

Charles Kong  
1017 Brown Street  
Bakersfield, CA 93305

E. R. Straatsma  
P.O. Box 214  
Folsom, CA 95630

  
Donald F. Griffin

Dated: July 27, 1992

STB

FD-30400 (SUB 21)

7-20-92

J

38360



**The Atchison, Topeka and Santa Fe Railway Company**



1700 East Golf Road  
Schaumburg, Illinois 60173-5860

38360

July 13, 1992

**Via Facsimile & Copy**

Ms. Ellen Keyes  
Office of Secretary  
Interstate Commerce Commission  
12th & Constitution, N. W.  
Washington, D. C.



RE: Finance Docket No. 30400 (Sub.-No.21)  
Santa Fe Southern Pacific Corp. - Control-  
Southern Pacific Transportation Co., etc.

Dear Ms. Keyes:

I spoke today with Ellen Goldstein at the Interstate Commerce Commission, who advised me that the Commission served a decision in this proceeding on June 18, 1992, but that it had been unable to serve Santa Fe Pacific Corporation with a copy of that decision.

As information for your records and purposes of the service list in this proceeding, Santa Fe Southern Pacific Corporation now is Santa Fe Pacific Corporation, located at 1700 East Golf Road, Schaumburg, Illinois 60173.

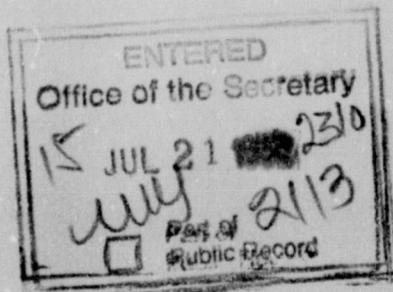
Richard E. Weicher, Guy Vitello and I should be shown as the sole attorneys of record for both Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company.

I would appreciate it if you promptly would provide to me a copy of the June 18 decision, including if it is convenient a facsimile copy sent to my attention at 708-995-6846.

I appreciate your assistance in this matter.

Very truly yours,

*Dennis W. Wilson*  
Dennis W. Wilson  
General Attorney



DWW/cms  
lucont\dww\keyes



**The Atchison, Topeka and Santa Fe Railway Company**



1700 East Golf Road  
Schaumburg, Illinois 60173-5860

38360

July 13, 1992

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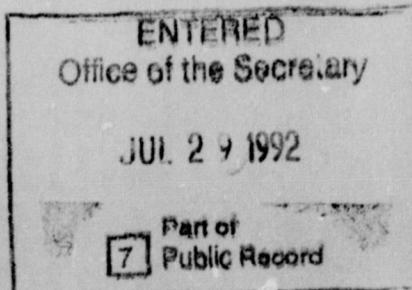
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Very truly yours,

*Dennis W. Wilson*  
Dennis W. Wilson  
General Attorney



DWM/cms  
lwcont\dwm\keyes

STB

FD-30400

(SUB 21)

12-12-89

J

Docket  
2108

**Interstate Commerce Commission**

**Washington, D.C. 20423**

December 12, 1989

OFFICE OF GOVERNMENT  
AND PUBLIC AFFAIRS  
(202) 275-7231

Mr. John D. Johnson  
Rt. 9, P.O. Box 235  
Cleburne, TX 76031

Re: ICC Finance Docket  
No. 30400 (Sub-No. 21)

Dear Mr. Johnson:

This is in response to your letter to the Commission regarding your railroad work and layoff experience.

In late September 1988, the Commission asked for comments on whether it has authority to impose conditions to protect railroad employees of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) or the Southern Pacific Transportation Company (SP) who might have been adversely affected by carrier actions taken in anticipation of approval of the proposed merger of the two railroads. The Commission specifically sought comments on its power to impose conditions where, as here, the merger application has been denied.

In a decision of February 9, 1989, the Commission concluded that it does not have the authority to impose labor protection as a condition to a railroad merger denial. The Commission went on to say that actions adversely affecting employees that were unilaterally undertaken by Santa Fe or SP management would be governed by collective bargaining agreements between those carriers and their respective employees. This would be the case whether or not the actions were in anticipation of the ultimately disapproved Santa Fe Southern Pacific Corporation (SFSP) acquisition of control over SP. Because SFSP controlled the Santa Fe before the control transaction was proposed, any effects on Santa Fe employees do not arise from the proposed transaction. Therefore, Santa Fe employees would likely have their only avenue of recourse through their collective bargaining agreements.

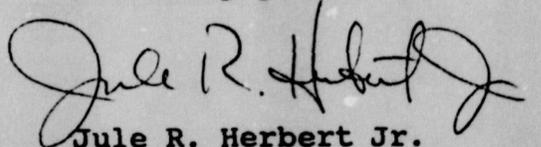
The Commission noted, however, that SP employees could have a remedy in court under 49 U.S.C. § 11705 if they can show that they were adversely affected by improper control exercised over SP actions by the SFSP. The key period for possible coverage under this option would be from December 23, 1983, when SFSP gained control over the SP's holding company (Southern Pacific Company) and the SP stock was put in a voting trust -- this is

when any possible unlawful control by SFSP over SP could have begun -- until October 10, 1988 when the Commission served its decision denying the proposed acquisition of control of SP by SFSP, after which time any actions by SP could not be considered to be in anticipation of the acquisition of control in common with Santa Fe.

In sum, Santa Fe employees may have a remedy for an improper layoff only through their collective bargaining agreements. Similarly, employees of either Santa Fe or SP who were adversely affected by a unilateral act of their employing railroads would be able to pursue a remedy through their respective bargaining agreements. SP employees who can demonstrate that they were harmed by any unlawful actions taken in anticipation of merger approval (common control of SP and Santa Fe by SFSP without ICC approval through violation of voting trust provisions or by other means), could also pursue a remedy in court.

Enclosed for your information is a copy of the Commission's decision. I hope that this has been helpful to you in understanding and selecting options you may have.

Sincerely yours,



Jule R. Herbert Jr.  
Acting Director

Enclosure: February 9, 1989 Decision, F.D. 30400 (Sub-No. 21)

2108  
Dockets

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF GOVERNMENT  
AND PUBLIC AFFAIRS  
(202) 275-7231

December 12, 1989

Mr. Henry H. Tidwell  
10701 Baron Avenue  
Bakersfield, CA 93312

Re: ICC Finance Docket  
No. 30400 (Sub-No. 21)

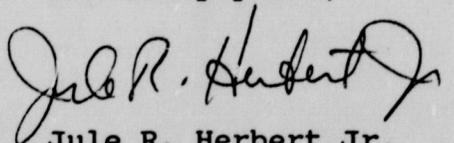
Dear Mr. Tidwell:

This responds to your letter asking if there is anything being done by any union of the crafts in Bakersfield, California regarding the failed Santa Fe, Southern Pacific railroad merger.

In a decision issued February 9, 1989, (copy enclosed) the Commission said it did not have authority to impose labor protection where certain Santa Fe and Southern Pacific Transportation Company employees had been adversely affected by actions of their employers taken in anticipation of the Santa Fe-SPT merger being approved. That decision is now on appeal in the 9th Circuit court in San Francisco. The case number is 89-70134, and the case name is Railway Labor Executives Association, International Association of Machinists and Aerospace Workers Lodge #19, and the United Transportation Union General Committee of Adjustments GO-8-87 vs. Interstate Commerce Commission.

For more information about whether Bakersfield craft unions are represented in this appeal, you should contact the 3 unions directly if you continue to be unsuccessful in attempts to reach your local union officials.

Sincerely yours,



Jule R. Herbert Jr.  
Acting Director

Enclosure: February 9, 1989 Decision, F.D. 30400 (Sub-No. 21)

STB

FD-30400 (SUB 21)

11-27-89

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Ms. Heather GRADISON

I WAS wondering if you could tell me if there is ANY thing being done by ANY UNION OF THE CRAFTS IN BAKERSFIELD. To my knowledge no one here has heard one word from their Union Leaders ON the matter OF BAKERSFIELD Employees being improperly Terminated except one! Machinist Union Recording Secretary here said he contacted the SP by mail & was told they didnt break any Federal Law. that we were Layed off due to WORK shortage. AS I STATED in my Letter to you EARLIER the ART OF TRAINS in & out of BAKERSFIELD didnt seem to change to me.

We had another bout of Bad Luck the lady that was handling the letters & notices Name; Lyla Timberlake died of a heart attack Last week she was the MANAGER OF our federal Credit Union.

it would be greatly APPRECIATED if you could let us know if there is ANY progress or action being taken by ANY ONE AT this Time

Henry N. Tidwell

8900935

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Nov 27 5 09 PM '89

OFFICE OF  
CHAIRMAN GRADISON

Docket 30700

I was a carman for the Santa Fe Railroad in Cleburne, Texas 76031.

I was first laid off in 1981, Dec. off for 20 months called back worked for 15 months laid off called back and in October of 1987 laid off not to be recalled as shop was to be closed for good.

I was laid off because of the Santa Fe and Southern Pacific merger and after that fell through all of the money that was spent left the shop in Cleburne to be closed.

The lay off adversely affected my life style as to my credit loss of material goods, I am at the present time working for General Dynamics in Ft. Worth, Texas still not caught up on anything I lost due to this matter.

John D. Johnson  
Rt. 9 Box 235  
Cleburne, Texas 76031

STB

FD-30400 (SUB 21)

5-1-89

J

*Trans. Sec. T.C.*

F.D. 30400

*received 1/17/81 Z.K.  
R.H. Sharp  
116 Glenrose Ave  
as soon as possible*

LAW OFFICES  
HIGHSAW & MAHONEY, P.C.  
SUITE 210  
1050 SEVENTEENTH STREET, N.W.  
WASHINGTON, D.C. 20036  
202-296-8500  
TELECOPIER (202) 296-7143

WILLIAM G MAHONEY  
JOHN O'B CLARKE JR  
RICHARD S EDELMAN  
L PAT WYNNIS  
JANET K DiCOSTA\*\*\*  
DONALD F GRIFFIN\*\*  
ELIZABETH A NADSON\*\*\*

OF COUNSEL:  
JAMES L HIGHSAW

ENTERED
Office of the Secretary
MAY 2 1989
<input type="checkbox"/> Part of Public Record

March 15, 1989

RECEIVED  
MAR 17 1989

FIREMEN AND OILERS  
LOUISVILLE, KY.

TO: All Chief Executives

FROM: Highsaw & Mahoney, P.C. *DFG*

RE: Santa Fe Southern Pacific Corporation--Control--  
Southern Pacific Transportation Company  
Finance Docket No. 30400 (Sub-No. 21)

RECEIVED  
MAY 1 12 10 PM '89  
OFFICE OF THE CHAIRMAN

This memorandum is an update to our memorandum of February 10, 1989 regarding the ICC's decision in the above-captioned proceeding. After further review of the ICC's decision, we believe RLEA should proceed in the following manner.

First, we are preparing for filing in the U.S. Court of Appeals for the Ninth Circuit a petition for review of the ICC's decision. The petition will challenge the ICC's ruling that it had no authority to impose mandatory protective conditions for the benefit of Southern Pacific and Santa Fe employees adversely affected by actions taken in anticipation of the failed merger of the two carriers.

Second, we believe the RLEA affiliated organizations should explore an action in U.S. District Court under 49 U.S.C. §11705 charging the Santa Fe Southern Pacific Corporation ("SFSP") with violations of the voting trust imposed by the ICC to prevent SFSP from exercising control over Southern Pacific during the pendency of the merger proceedings. To this end, we recommend that each organization poll its members on both the Southern Pacific and the Santa Fe in an attempt to identify those members who claim to have been adversely affected by actions taken in anticipation of the merger. As an aid in such a poll, we have prepared a sample questionnaire for your information and use.

If you have any questions, please contact Donald F. Griffin.

QUESTIONNAIRE

Dear Brother or Sister:

The following is a questionnaire developed by your union to obtain information about the failed Santa Fe-Southern Pacific merger. A recent decision by the Interstate Commerce Commission ("ICC") raised the possibility that individuals adversely affected by actions taken in anticipation of that failed merger may have an action for damages against the Santa Fe Southern Pacific Corporation ("SFSP"). It is important to remember that the ICC did not authorize protective payments in this case, the decision merely raised the possibility that we can bring a court action for damages arising from SFSP's possible violation of the voting trust established for Southern Pacific stock. This questionnaire will enable your union to better assess the impact of the ICC's decision on the membership. Please be as precise in your answers as possible because this information will be given to the union's lawyers to help us decide what steps if any, we can take against Santa Fe, Southern Pacific or SFSP.

1. Name: Tommy C. Franklin
2. Address: 507 Sabine st
3. City, State, zip: Cleburne, TX 76031
4. Home Telephone: 817-645-5571
5. Employing carrier during the period 1983-1988:  
 Southern Pacific Transportation Co.  
 Atchison, Topeka & Santa Fe Railway Co.

6. Are you currently employed by that carrier:

[ ] Yes [✓] No

7. If you are no longer employed, were you:

[ ] Dismissed for cause

[ ] Resigned

[✓] Furloughed

8. State the date you ceased employment: March 22, 1989

9. Union affiliation: I. B. F. O

10. Date you claim you were adversely affected: yes

11. Your work location at the time of adverse affect:

Celburne shops in Celburne, Texas

12. Your position title at the time of adverse affect:

Labourer

13. The reason you believe you were adversely affected (please be as detailed as possible particularly regarding any reasons for believing the adverse effect was caused by SFSP control of SP - use separate sheet of paper if necessary):

The loss of my job has <sup>cause</sup> mental distress and financial difficulties because I cannot provide for my family properly. I can't pay my bills. I cannot find a job. My credit has also be affected. It has also cause mental Depression. You just don't know how I'm going make it.

14. Your approximate money damages suffered from the adverse affect (include any "out-of-pocket" expenses for health care, etc.):

About Sixteen Hundred Dollars per month.

Docket # 30400

1. My was labour.
  2. Cleburne shops the Diesel ramp.
  3. I was laid off! March 2, 1989.
  4. Why I was laid off. Force in reduction. They also said Santa Fe. was going broke. They also sent our work to other shops. The managements had members of other crafts do our job. And they were laying the labours off. They also said that they were going to abolish all the labours jobs. They also said there wasn't enough money for the Santa Fe to operate.
- The lay-off affected my family life as well my bills. It has emotionally affected my family. I can't provide for them the way I've done in the past. Since I've been working I've been helping mother out. She has been sick and were unable to get financial assistance. She lives over two hundred miles away. I can't visit her like I use to.

I've worked there for almost twelve years. I've had three weeks vacation. The yearly trips are over. all those years. are gone.

I've had an injury on the job and had surgery. With the nature of my surgery. I think I'm unable to get another job. with another company. after I had surgery I explain to the doctor that I needed to try to return to work, because my benefits were exhausted. I tried to return and they wouldn't let me. So my wife had to take two part-time jobs to help out.

Sammy Franklin

STB FD-30400 (SUB 21)

10-13-88

J

Interstate Commerce Commission

Washington, D.C. 20423

OCT 13 1988

Rm. 2203

Please add  
to service  
list

OFFICE OF GOVERNMENT  
AND PUBLIC AFFAIRS  
202-275-7231

Mr. Charles Kong  
1017 Brown Street  
Bakersfield, CA 93305

RE: ICC Finance Docket  
30400 (Sub. No. 1)

Dear Mr. Kong:

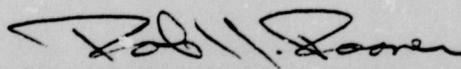
This is in response to your letter describing your termination of employment as a car inspector at Bakersfield, California.

The Commission in a decision served September 12, 1988, in FD 32000 - Rio Grande Industries, Inc. control of SPT (copy enclosed) imposed labor protection conditions on the transaction. These conditions are designed to protect only employees of railroads participating in the transaction. While the SFSP merger (FD 30400) was not approved, the Commission noted special circumstances connecting the two proceedings. The Commission will take public comments and will consider whether and how to provide relief to employees of the ATSF and the SPT who may have been already affected by actions taken in anticipation of the SFSP merger. A copy of the Notice is attached. Also, please refer to pages 95 and 96 of the enclosed decision in FD 32000.

Your letter is being included as a comment in the record on this matter. Your name has been added to the service list so that you will receive copies of actions in this proceeding.

In the interim, if you have not already done so, you may wish to contact your union's officials in regard to the possibility of filing a claim in connection with the provisions of your union's collective bargaining agreement with SPT.

Sincerely yours,

  
Alexander H. Jordan  
Director

ENTERED  
Office of the Secretary

OCT 17 1988

Part of  
Public Record

Enclosure